

EFFECTIVENESS OF DEPARTMENT OF DEFENSE POLICIES ON  
COPYRIGHTED MEDIA: BAZAAR OCCURRENCES IN IRAQ  
AND AFGHANISTAN

A thesis presented to the Faculty of the U.S. Army  
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MASTER OF MILITARY ART AND SCIENCE  
General Studies

by

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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

## ABSTRACT

EFFECTIVENESS OF DEPARTMENT OF DEFENSE POLICIES ON  
COPYRIGHTED MEDIA: BAZAAR OCCURRENCES IN IRAQ AND  
AFGHANISTAN, by MAJ Louis D. Cogswell, 91 pages.

The thesis author noticed on deployments to the Middle East that leaders allowed locals to sell pirated media to troops on base. As an officer who protects information as a career, he thought it behooved him to investigate this situation and ask, “How effective are DoD policies on copyrighted media?” The research focused on the cultural divide on copyright between the U.S. and two developing countries, Afghanistan and Iraq. To understand this difference, the author conducted research on the following group’s viewpoints; the local inhabitants, the victims of piracy and intellectual property holders, legislation and enforcement agencies, and the cultural effect on Soldiers. Unfortunately, there seems to be no history of analysis or U.S. prosecution of media copyright infringement in these countries. However, comparing the laws that govern U.S. citizens, customs regulations, the rights given to intellectual property holders, and written guidance given to Soldiers in these countries, it is clear that there are discrepancies which have negatively changed the culture of the American Soldier. Given the growing trend of harsher legislation and enforcement, Soldiers potentially face future U.S. or international felony charges if the current practices and guidance continue.

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The impetus behind researching this topic was the genesis of years of deployments and the experience the Army gave me during those deployments. Furthermore, the discussions about this topic I had with leaders, peers, and subordinates over the years cemented the need to bring this topic to light. The spectrum of individual and organizational views brought to my attention during these various discussions helped me achieve a greater understanding of the scope of the issue and disparity of knowledge

on the subject. The candid discussions we have had gave me the ability to view the world through different lenses.

I would be remiss if I did not acknowledge and thank my family for the love and support they have shown over the past year during the research process. To my children, Louie and Sadie, you offered me a break from the monotony of studying pouring laughter and love into my life. To my wife Alyssa, I am eternally grateful for your patience throughout this past year. As always, I love you and will continually strive to be the man you deserve.

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## ACRONYMS

ACTA	Anti-Counterfeiting Trade Agreement
APEC	Asia Pacific Economic Council
APW	Anti-Piracy Warning
CBCA	Customs and Border Clearance Agent
CBP	Customs and Border Protection
CENTCOM	(U.S.) Central Command
DMCA	The Digital Millennium Copyright Act
DoD	Department of Defense
DVD	Digital Versatile Disc or Digital Video Disc
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
GII	Global Information Infrastructure
ICC	International Chamber of Commerce
IP	Intellectual Property
IPCA	Intellectual Property Counsel of the Army
ISP	Internet Service Provider
MNF-I	Multi-National Force- Iraq
MPAA	Motion Picture Association of America
NCPA	National Crime Prevention Association
OEF	Operation Enduring Freedom
OIF	Operation Iraqi Freedom
OND	Operation New Dawn
P2P	Peer-to-Peer file-sharing

PRO IP	Prioritizing Resources and Organization for Intellectual Property
PX	Post Exchange
RAND	Research and Development
RIAA	Recording Industry Association of America
SF	Standard Form
TPP	Trans-Pacific Partnership
UCMJ	Uniform Code of Military Justice
UN	United Nations
VCD	Video Compact Disc
VHS	Video Home System
WCO	World Customs Organization
WESP	World Economic Situation and Prospects
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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## CHAPTER 1

### INTRODUCTION

#### Overview

We spend hundreds of millions producing, marketing, and distributing movies, but we can't compete with free. That's an economic paradigm that doesn't work. If films are stolen, it's the death knell of our industry.

— James Gianopulos, *The New Yorker*

During the past 15 years at war in the Middle East, the United States (U.S.) military operated in at least two countries, Iraq and Afghanistan, that have substantially different cultural attitudes than the U.S. towards copyright in regards to pirated media. When diverse cultures coexist in one location, many possible scenarios could exist involving these cultural differences. This thesis examines the cultural divide between copyright infringement, and how the relationship between these countries evolved in reference to the issue of pirated copyrights.

America's entertainment culture fully supports the big businesses of Hollywood and film, music, and software production studios. As technology grows, making reproductions and sharing of this copyrighted content has become possible in every household.<sup>1</sup> Also prevalent in American society is the media attention and intellectual property-backing movements to protect this material. The International Chamber of

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<sup>1</sup> Tom Spring, "DVD Ripping Flourishes," PC World, February 9, 2005, accessed May 19, 2016, <http://www.pcworld.com/article/119549/article.html>.

Commerce (ICC) estimates that digitally pirated music, movies, and software account for between \$30 to \$75 billion in revenue just in 2008.<sup>2</sup>

American Soldiers bring their culture with them into deployed environments. The Soldiers have only a few options when living in these deployed environments to acquire media legally for enjoyment. First, they may purchase media at a Post Exchange (PX). Second, they may also purchase it online usually in disc or downloadable content form. Finally, they may have someone who purchased the media legally send it in the mail. Barring extenuating circumstances, these are the only options due to the geographic separation to legal markets.

However, soldiers who chose to procure the media illegally also have a few options in these environments. They may purchase a pirated copy from a vendor at a bazaar on base. Additionally, if the Soldier has access to commercial internet, and the internet provider is not blocking certain websites, they may download the media illegally through a peer-to-peer site. A peer-to-peer site or torrent site allows users globally to host any files they wish for any to download.

The United States has had troops on ground operating in Afghanistan supporting Operation Enduring Freedom (OEF) since 2001, and since 2003 in Iraq supporting Operation Iraqi Freedom (OIF) / Operation New Dawn (OND). For years, U.S. bases seemingly only in deployed environments have allowed local nationals to set up shop and sell their wares on post bazaars. Unfortunately, one hot item they sell is their large

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<sup>2</sup> Frontier Economics, *Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy* (London: Frontier Economics, February 2011), accessed December 10, 2015, <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/>, 3.

collection of movies, music, and software. Given the reported quality of the media sold, the media is potentially pirated through various methods.

Admittedly, the cultures of the occupied countries in question, Afghanistan and Iraq, are not exactly the same; yet, their views on copyright infringement seem similar at first glance. In Afghanistan, Taliban extremists were in control of the country roughly from 1996 until 2001. Under Taliban rule, strict interpretation of Sharia law limited access to most forms of media to include movies, music, and the internet due to Western influence. Due to these severe restrictions, an underground market for pirated media crept in through places like Pakistan being hid from Taliban rule. After the Taliban was overthrown and their influence diminished, Afghan citizens could bring their pirated goods to the foreground of the Afghan local economies to include the base bazaars where it was easy to capitalize on their investments. Further, Afghanistan does not have regulating bodies like the Motion Picture Association of America (MPAA) to fight for the rights of the intellectual property holder. Therefore, it is not hard to see why this loose and lucrative culture affecting copyrights has developed so quickly in this part of the world.

The author of this thesis has three combat deployments in these two countries, upon return from each the U.S. Customs department has searched every nook and cranny of every bag, box, and container shipped back to the states. Upon every search, customs officers issue a form stating what Soldiers may carry back to the United States legally. On each of these deployments, Soldiers were entitled to bring one copy of each title they purchased in these bazaars back into the U.S. After so many years at war with multiple deployments, it is easy to see how Soldiers could build giant libraries of this material.

Compounding the problem, the price of hard-drives and media storage plummeted over the years. Commensurate with these price drops, the capacity of the drives went up which allowed Soldiers to start moving their media from discs to hard-drives. This practice reduced the amount of equipment they had to transport on deployments and eliminated the probability of damaging their DVDs, etc. Additionally, this practice gave Soldiers various options for sharing and acquiring movies while operating in these environments. Once Soldiers redeployed back to the US, they lost access to the bazaars and the less-expensive pirated DVD sales. Unfortunately, the potential exists for many Soldiers to feel it is still their right to attain this material at such low prices, if not free. Thus, torrent sites and peer-to-peer sites have replaced the bazaars, which offer anyone the ability to share their entire library of pirated media. Thus the topic begs the question, how effective are Department of Defense (DoD) policies on copyrighted media? The answers will impact the operations of military personnel based in these environments.

#### Primary and Secondary Research Questions

The primary research question is “How effective are DoD policies on copyrighted media?” In order to answer the primary research question, the following secondary questions must be answered.

1. What are the U.S., DoD, and transnational policies on copyright in regards to pirated media?
2. What are the prime cases used as reference for these policies and were there consequences for infringement?
3. What cultural effects did these cases have on their organization?



4. How does media piracy affect Afghanistan and Iraq as nations and their cultural identity?

5. What additional effects can existing policies have on the United States military?

### Limitations and Delimitations

The scope of this research intends to remain limited to the policies and impacts of copyright piracy trends in regards to the military culture. Further, the research is limited to conditions in Afghanistan and Iraq.

However, there are delimitations. First, case studies and reports outside of the military must be included to define media piracy. Second, a limited number of articles are included outlining U.S. punishments dealt to citizens to show what an American can potentially expect if a copyright law is broken. And finally, since there are few, if any, examples of military punishments to draw from, the author relied on cases within the civilian sector. In essence, sources investigated outside the military suggest an uncomfortable gap in documented cases within the military.

This study is significant as it attempts to determine if there is a gap in policies governing this phenomenon. If there is a gap, then the U.S. military remains vulnerable by this gap once stakeholders determine the scope of the problem and enforcement agencies target Soldiers. This gap could cause significant ramifications for the American Soldier, given he or she returns home and carries the adaptation of the culture home. This would leave them potentially operating illegally on the home front and subject to current and potential future harsher litigation and punishment.

## CHAPTER 2

### LITERATURE REVIEW

#### Introduction

The literature review begins by defining copyright and intellectual property generally and in terms of special military considerations mentioned. Next, a brief history of media piracy is explored, mostly from a U.S. perspective. This research attempts to review the exponential growth trending toward digital media piracy and piracy is a luring endeavor. The research then provides a focus on how copyright protection has matured in developed countries such as the U.S., as well as in developing countries. As the scope of this research is limited to military interaction in deployed environments, the history of media piracy in these developing countries will be explored, as well as the environment where the U.S. military and these developing countries meet in regards to media piracy. Finally, initial conclusions are drawn from the literature review.

There are limited primary sources covering the specific topic of media piracy in environments where the U.S. military personnel are deployed. Personal blogs, excerpts from books written by former Soldiers, and newspaper articles covering the sales of these copyrighted materials at the bazaars on base appear as the only primary sources.<sup>3</sup> These

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<sup>3</sup> Zaid Sabah, "Pirated DVDs Among the Hottest Items on Iraqi Shelves," *USA Today*, January 19, 2006, accessed April 4, 2016, [http://usatoday30.usatoday.com/news/world/iraq/2006-01-19-iraq-dvds\\_x.htm](http://usatoday30.usatoday.com/news/world/iraq/2006-01-19-iraq-dvds_x.htm); César G. Soriano, "Pirated movies make Afghan Scene," *USA Today*, December 5, 2002, accessed October 26, 2015, <http://usatoday30.usatoday.com/life/2002/2002-05-13-afghan-spidey.htm>; Kent Harris, "Local Bazaars Bring Bargain Shopping to American Troops in Afghanistan," *Stars and Stripes*, March 19, 2005, accessed December 7, 2015, <http://www.stripes.com/news/local-bazaars-bring-bargain-shopping-to-american-troops-in-afghanistan-1.30719>; Matthew Vernon, *Eyes Over Afghanistan: Hearts, Minds, and the Bloody Battle of Wills* (Raleigh, NC: Lulu Publishing Services, 2014), 21-22.

sources were essential to the suggestion that pirated media were readily available at the bazaars in both Iraq and Afghanistan. As the author of this paper deployed to both countries between 2003 and 2013, he was in a unique position to witness these materials on all three deployments. As the phrase goes, “seeing is believing” and there is no higher primary source than being an actual witness to these environments.

Secondary sources range from subject matter experts in their fields, including RAND Corporation research publications to technology bloggers who live on the pulse of cyber issues such as intellectual property piracy. A thorough review of lower level enforcement agency and DoD policy when applicable will prove useful to determine effectiveness. However, the majority of the literature reviewed is from second hand sources.

### Defining Copyright and Intellectual Property

The first step in this topic is to research the laws surrounding intellectual property (IP). This section addresses how a developing country such as the U.S. views IP and copyright. Current U.S. laws, as well as some general international laws, will require review. Special attention will be focused on any DoD stances in regards to these practices to determine if there is sufficient standing policies or guidance for DoD personnel in deployed environments. A key aspect will be deciding what is punitive and what offense categories exist. Another key aspect will be any differences between civil law and the Uniform Code of Military Justice (UCMJ).

U.S. copyright law dates back to the Constitution.<sup>4</sup> The Constitution is the foundation document in the U.S. which gives power to the Congress to make laws to govern Copyright and IP. The Constitution grants this power stating, “The Congress shall have Power. . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”<sup>5</sup>

However, a worldwide perspective of the definitions will best serve defining these areas as the U.S. participates and leads many of the global efforts to uphold these rights. According to the World Intellectual Property Organization (WIPO), “Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”<sup>6</sup> Movies and television shows are not only the IP of the movie production company that created the work, but a conglomeration of various creations of the mind that have been combined to form a unique product. Works of this kind could contain televisions portraying other film works, soundtracks featuring music from various recording artists, visual works of art, poems, references to or images of famous individuals and actors, as well as trademarked items could be protected by IP law. Each of these individual pieces of IP may be tied to various

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<sup>4</sup> John Tutterow, “Copyright Issues at the Unit Level: Seeing through the Fog of Law,” *The Army Lawyer* (August 2011): 26-36, accessed September 23, 2015, <http://search.proquest.com/docview/906237209?accountid=28992>.

<sup>5</sup> United States Constitution, Article I, Section 8.

<sup>6</sup> World Intellectual Property Organization, “What is Intellectual Property?” accessed April 4, 2016, <http://www.wipo.int/about-ip/en/>.

aspects of copyright law falling under various IP holders.<sup>7</sup> Thus, a single IP or copyright infraction on one movie may affect various other IP holder rights.

Copyright is only one of the four main branches of IP law, although there are lesser branches. According to the World Intellectual Property Organization (WIPO), “Copyright (or author’s right) is a legal term used to describe the rights that creators have over their literary and artistic works.”<sup>8</sup> Essentially this is the right the intellectual property holder has over his intellectual property to govern how it copied. From a consumer’s point of view, copyright law limits the legal rights they have to copy material.

### Milestone Copyright Legislation

Reviewing milestone legislation within the U.S. and its interaction on an international scale is important because it shows how the U.S. developed IP legislation along with the world as technology grew. Copyright is territorial in nature, therefore different organizations, states, and nations may all interpret or form laws based on the organizational or local culture. Legislators are struggling to keep up with the growing age of technology as well as integrate transnational economic effects and globalization. Worldwide transnational copyright protection efforts started as early as 1886. The United States Copyright Office includes the Berne convention efforts on their U.S. timeline of momentous copyright milestones. “The Berne Convention for the Protection of Literary

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<sup>7</sup> CrashCourse, “Copyright, Exceptions, and Fair Use: Crash Course Intellectual Property #3,” YouTube, May 7, 2015, accessed May 19, 2016, [https://www.youtube.com/watch?v=Q\\_9O8J9skL0](https://www.youtube.com/watch?v=Q_9O8J9skL0).

<sup>8</sup> World Intellectual Property Organization, “What is Copyright?” accessed April 4, 2016, <http://www.wipo.int/copyright/en/>.

and Artistic Works, the first multilateral international copyright treaty, is signed in Berne, Switzerland. The United States is represented at the conference in 1886 but does not sign with the rest of the Berne signatories until much later.”<sup>9</sup> The U.S. would not enter into this treaty until 1 March 1989, nevertheless would enter into other multilateral copyright agreements prior to signing the Berne Treaty.

The next major implementation of copyright law in the U.S. did not occur until nearly a century later just as the entertainment industry was entering a revolution in home use. The majority of copyright legislation in the U.S. stems from the statutory provisions developed in the Copyright Act of 1976. The 1976 Act became a major revision of copyright law which now builds the framework for the subsequent copyright legislation.<sup>10</sup> This law defined areas such as the exclusive rights to copyright holders such as reproduction and distribution rights. The law also coined the term “fair use,” which allows users to use the intellectual property to some extent in some circumstances. Copyright Law in the U.S. subsequently was established in U.S. code under Title 17.<sup>11</sup>

The first major copyright court case involving movies, television, and the ability to copy the entirety of these products from the average U.S. home came about in 1984. Universal Studios, in conjunction with other movie studios, sued the Sony Corporation over the sales of the Betamax VCR and its implications to the copyright protection of

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<sup>9</sup> U.S. Copyright Office, “Timeline,” accessed April 4, 2016, <http://copyright.gov/about/timeline.html>.

<sup>10</sup> U.S. Copyright Office, “Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code: Circular 92,” accessed April 4, 2016, <http://www.copyright.gov/title17/92preface.html>.

<sup>11</sup> Title 17 U.S.C.

movie studio's IP.<sup>12</sup> "In the Sony case, the Court found that home taping of entire television shows was fair use, in that most viewers were only taping in order to watch the shows later ("time-shifting" in the words of the Court), and not collecting for permanent use. Significantly, the Court found that taping to view later did not deprive the copyright holders of any revenue."<sup>13</sup> It is important to note that the legality of recording these shows was centered around the concept of personal use and not recording for redistribution. The illegal redistribution of material through this legal medium was an unfortunate byproduct of the right to "time-shift" shows for personal use later.

Though Sony won the case, guarding copyright and IP became a salient topic that would only escalate as technology found new ways to protect against infringement and get around copyright protection. As early as 1983, the FBI included a warning message at the beginning of every home release movie; however, the initial FBI film enforcement messages developed when J. Edgar Hoover was the director of the FBI.<sup>14</sup> According to the FBI, "The purpose of the APW Seal is to remind media users of the serious consequences of pirating copyrighted works."<sup>15</sup> The regulatory agency section later will cover more on the FBI role in protecting copyright.

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<sup>12</sup> Sony Corp. of Am. v. Universal City Studios, 464 U.S. 417, 439 n.19 (1984).

<sup>13</sup> Tutterow, 29.

<sup>14</sup> Eriq Gardner, "FBI Anti-Piracy Warnings: A Graphical History," The Hollywood Reporter, May 9, 2012, accessed December 9, 2015, <http://www.hollywoodreporter.com/thr-esq/fbi-anti-piracy-warnings-over-time-pictures-322495>.

<sup>15</sup> Federal Bureau of Investigation, "Intellectual Property Theft: FBI Anti-Piracy Warning Seal," accessed April 4, 2016, [https://www.fbi.gov/about-us/investigate/white\\_collar/ipr/anti-piracy](https://www.fbi.gov/about-us/investigate/white_collar/ipr/anti-piracy).

The 1990's ushered in the advent of the internet to households across the world. With this technology came the ability for people and nations around the world to communicate in new and faster methods. Again, with newer technology came new ways to exploit and protect this technology. Organizations such as the WIPO and the World Trade Organization (WTO) started integrating the idea of protecting digital medium into international treaties in response to the growing technology.<sup>16</sup> Trade was now growing globally because of the internet as well as the trade of and access to counterfeit goods.

In 1998, President Clinton signed into law the Digital Millennium Copyright Act (DMCA) which enacted two WIPO treaties in the U.S. One of the primary implications of the DMCA for this research was the identification of civil and criminal acts and penalties in regards to copyright. The DMCA also created limitations on liability for Internet Service Providers (ISPs) on copyrights granted they comply with regulatory procedures.<sup>17</sup>

Title I implements the WIPO treaties. First, it makes certain technical amendments to U.S. law, in order to provide appropriate references and links to the treaties. Second, it creates two new prohibitions in Title 17 of the U.S. Code—one on circumvention of technological measures used by copyright owners to protect their works and one on tampering with copyright management information—and adds civil remedies and criminal penalties for violating the prohibitions.<sup>18</sup>

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<sup>16</sup> World Trade Organization, "The Uruguay Round," accessed December 10, 2015, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm); United States Copyright Office, "Timeline."

<sup>17</sup> U.S. Copyright Office, "The Digital Millennium Copyright Act of 1998: U.S. Copyright Office Summary," accessed April 4, 2016, <http://www.copyright.gov/legislation/dmca.pdf>, 2.

<sup>18</sup> Ibid.



The second major copyright court case involving home media and the ability to copy the entirety of these products from the average U.S. home occurred in 2000. A company called Napster using the technology called peer-to-peer file-sharing (P2P) arose in the prominent court case between *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004.<sup>19</sup> Peer-to-peer file-sharing is the process of a server hosting a database of user computers with its list of files available for swapping. The file share provides a forum and often the mechanics to directly download the files. The actual files are not stored on the file share server. Napster provided a forum for music sharing via MP3 file format and had approximately 20 million users.<sup>20</sup> The Napster case study challenged many preconceived notions about copyright and the future distribution of digital content, as well as forced further digital copyright protection legislation. Napster argued it did not actually keep the music on its servers, and that its 20 million users chose to perpetuate the trading of this copyrighted music despite their warning banner about unauthorized reproduction of music. At the end of the case, the district court issued an injunction or warning order for Napster to shut down the service.<sup>21</sup>

After the Napster case, more services such as Napster came under legal scrutiny as the cases moved eventually to the Supreme Court. In *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), Justice Souter stated, “We hold that one who distributes a

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<sup>19</sup> *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (2001).

<sup>20</sup> Padraig Donohue, “Napster- A Case Study,” Computer Science Department, Trinity College, accessed December 9, 2015, <http://ntrg.cs.tcd.ie/undergrad/4ba2.01/group10/napster.html>.

<sup>21</sup> Washington University in St. Louis School of Law Blog, “Case Study: *A&M Records, Inc. v. Napster, Inc.*,” August 1, 2013, accessed December 9, 2015, <https://onlinelaw.wustl.edu/blog/case-study-am-records-inc-v-napster-inc/>.

device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties.”<sup>22</sup> These cases were not limited to U.S. courts. In 2009, the Pirate Bay founders, another file-sharing site, received a fine of \$3.6 million and sentenced a year in jail by the Stockholm, Sweden District Court.<sup>23</sup>

The final piece of legislation important to copyright protection is the Prioritizing Resources and Organization for Intellectual Property (PRO IP) Act of 2008.<sup>24</sup> This act stood up unprecedented efforts to protect copyright and intellectual property while escalating civil and criminal punishments for copyright infringement. The U.S. Copyright Office also states, “The Act also provides for improved investigative and forensic resources for enforcement of laws related to intellectual property crimes and allocates additional funding for resources to investigate and prosecute intellectual property crimes and other criminal activity involving computers.”<sup>25</sup>

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<sup>22</sup> MGM Studios, Inc. v. Grokster, Ltd., 545 U.S. 913 (2005).

<sup>23</sup> International Federation of the Phonographic Industry, “Unofficial Translation of the Pirate Bay Verdict,” accessed April 4, 2016, <http://www.ifpi.org/content/library/Pirate-Bay-verdict-English-translation.pdf>; Jemima Kiss, “The Pirate Bay Trial: Guilty Verdict,” *The Guardian*, April 17, 2009, accessed April 4, 2016, <https://www.theguardian.com/technology/2009/apr/17/the-pirate-bay-trial-guilty-verdict>.

<sup>24</sup> Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110-403, 110th Cong. (October 13, 2008).

<sup>25</sup> U.S. Copyright Office, “Prioritizing Resources and Organization for Intellectual Property Act Becomes Public Law 110-403,” accessed May 9, 2016, <http://www.copyright.gov/newsnet/2008/354.html>.

### Military Regulation Copyright and Intellectual Property

The DoD does not specifically have a regulation or a pamphlet addressing the sales of counterfeit DVDs in deployed environments. However, there are publications stating the military's stance on copyright infringement. The Army, Air Force, Marines, Navy, and Coast Guard derive their regulations and policies remain compliant with the higher DoD directive. DoD Directive 5535.4, *Copyrighted Sound and Video Recordings* clearly identifies that the military acknowledges the rights of copyright owners and will not condone unlawful reproduction of this material for private use.<sup>26</sup>

3.1. It is DoD policy:

3.1.1. To recognize the rights of copyright owners by establishing specific guidelines for the use of copyrighted works by individuals within the DoD community, consistent with the Department's unique mission and worldwide commitments.

3.1.2. Not to condone, facilitate, or permit unlicensed public performance or unlawful reproduction for private or personal use of copyrighted sound or video recordings, using Government appropriated- or nonappropriated-fund-owned or – leased equipment or facilities.<sup>27</sup>

Additionally, each service has an office of the general counsel within their legal department tasked with interpreting legal matters with DoD policy and upholding intellectual property laws.<sup>28</sup> These intellectual property attorneys protect the military from unlawful IP infringement and manage claims against the military as an institution from potential IP holders. The Army, delegates this responsibility down to the Intellectual

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<sup>26</sup> U.S. Department of Defense, Directive 5535.4, *Copyrighted Sound and Video Recordings* (Washington, DC: Government Printing Office. November 21, 2003), 1-2.

<sup>27</sup> Ibid.

<sup>28</sup> Department of the Navy Office of the General Counsel, "Intellectual Property Laws," accessed April 4, 2016, <http://www.secnave.navy.mil/OGC/Pages/Intellectual-Property.aspx>.

Property Counsel of the Army (IPCA). Army Regulation 27-60 established the position of the IPCA in June of 1987. The duties of this position listed in paragraph 1-4 as of 1 July 1993 state this person will, “Establish Army policies, regulations, and guidelines relating to intellectual property law.”<sup>29</sup>

It is DA policy to recognize the rights of copyright owners consistent with the Army’s unique mission and worldwide commitments. As a general rule, copyrighted works will not be reproduced, distributed, or performed without the permission of the copyright owner unless such use is within an exception under United States Copyright Law, 17 USC, or such use is required to meet an immediate, mission-essential need for which noninfringing alternatives are either unavailable or unsatisfactory. Use of a copyrighted work by the Army without permission of the owner must be approved by the IPCA.<sup>30</sup>

The Air Force follows a similar regulation governing copyright. Air Force Instruction 51-303 implements the policy of the Air Force by the General Counsel of the Air Force.<sup>31</sup> This research will not investigate all five of the services policies. However, it is apparent DoD policy of the protection of copyright is nested down to them as seen by the Army and Air Force regulations.

10.1 Each Government officer, agent, and employee acting within the scope of his or her official duties should:

10.1.2. Avoid the unauthorized use of copyrighted material where possible except when permission has been obtained by the copyright owner as hereinafter provided.<sup>32</sup>

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<sup>29</sup> U.S. Department of the Army. Army Regulation (AR) 27-60, *Intellectual Property* (Washington, DC: Government Printing Office, June 1, 1993).

<sup>30</sup> *Ibid.*, 6.

<sup>31</sup> U.S. Department of the Air Force, Air Force Instruction 51-303, *Intellectual Property--Patents, Patent Related Matters, Trademarks and Copyright* (Washington, DC: Government Printing Office, September 1, 1998).

<sup>32</sup> *Ibid.*, 7.

### Regulatory Agencies Involved

As the technology within the world grows to new levels, so does the imagination and creative use of this technology. Given this growth, continued creativity, and manipulation of this technology, the governing bodies and regulatory agencies policing these technologies have grown in number, as well. Internationally, the U.S. works with a number of global partners to include governments and non-governmental agencies to combat media piracy. These initiatives include: World Customs Organization (WCO), World Intellectual Property Organization (WIPO), World Trade Organization (WTO), Asia Pacific Economic Council (APEC), Trans-Pacific Partnership (TPP), Anti-Counterfeiting Trade Agreement (ACTA).<sup>33</sup> At the national level, there are numerous policing agencies with various jurisdictions over intellectual property as well.

The FBI criminal investigative program has a priority for investigating crimes against intellectual property. The FBI's web page illustrates the important of their role in protecting IP as, "The FBI, along with the U.S. Attorney's Offices, has made investigating and preventing intellectual property theft a top priority within the Bureau."<sup>34</sup> One deterrent used to combat anti-piracy is the aforementioned FBI warning message or Anti-Piracy Warning (APW) seal and the public service announcement

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<sup>33</sup> World Customs Organization, accessed April 4, 2016, <http://www.wcoomd.org/en.aspx>; World Intellectual Property Organization, accessed April 4, 2016, <http://www.wipo.int/>; World Trade Organization, accessed December 10, 2015, <https://www.wto.org/>; Asia Pacific Economic Council, accessed April 4, 2016, <http://www.apec.org/>; Trans-Pacific Partnership, accessed April 4, 2016, <https://medium.com/the-trans-pacific-partnership/intellectual-property-3479efdc7adf#.s2z46zf93>; Anti-Counterfeiting Trade Agreement, accessed April 4, 2016, <https://ustr.gov/acta>.

<sup>34</sup> Federal Bureau of Investigation, "Intellectual Property Theft: FBI Anti-Piracy Warning Seal."

preceding motion pictures. The FBI webpage on Intellectual Property Theft states the following on the importance of the warning.

The purpose of the APW Seal is to remind media users of the serious consequences of pirating copyrighted works. Use of this seal does not indicate that the FBI has reviewed or validated copyright interests in the particular work and does not provide greater legal protection to the work. It simply serves as a widely recognizable reminder of the FBI's authority and mission with respect to the protection of intellectual property rights.<sup>35</sup>

Currently, the warning message displays the FBI APW seal portrayed aside the badge of the department of Homeland Security Investigations seen in figure 1. This image added emphasis of the new power that Homeland Security has to seize potentially harmful or illegally operated web domains just like any other property criminals are using in their acts of piracy. Furthermore, a second warning displayed on some videos now from the Intellectual Property Center website. This warning advises that, "Piracy is not a victimless crime."<sup>36</sup> The 2012 annual Congressional Report on the PRO IP act states the importance of the FBI within the IPR Center. "The FBI is a primary partner at the National Intellectual Property Rights Coordination Center (IPR Center). The IPR Center serves as a centralized, multiagency entity to coordinate, manage and advocate the U. S. Government's Federal criminal enforcement of intellectual property rights laws."<sup>37</sup>

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<sup>35</sup> Ibid.

<sup>36</sup> Intellectual Property Center, "Anti-Piracy Warning," accessed April 4, 2016, <https://www.iprcenter.gov/ip-theft/digital-ip-theft>.

<sup>37</sup> U.S. Department of Justice, "Congressional Report: Federal Bureau of Investigation, PRO IP Act Annual Report 2012," FBI, accessed May 9, 2016, <https://www.justice.gov/sites/default/files/dag/legacy/2013/01/29/fbi-pro-ip-rpt2012.pdf>, 1.



Figure 1. FBI Warning Message

*Source:* David Kraves, “Pirates Beware: DVD Anti-piracy Warning now Twice as Fierce,” *Wired*, May 12, 2012, accessed December 9, 2015, <http://www.wired.com/2012/05/anti-piracy-warning-updated/#slide-1>.

The Customs and Border Protection (CBP) agency is the primary U.S. enforcement agency to control and guarding America’s borders, to include guarding against intellectual property violations. The CBP website shows the scope of the interagency cooperation the CBP relies on by stating, “CBP has been entrusted with enforcing hundreds of laws for 40 other government agencies.”<sup>38</sup> They are responsible for seizure of material entering or leaving the U.S. that infringe on U.S. trademarks,

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<sup>38</sup> U.S. Customs and Border Protection, “Prohibited and Restricted Items,” accessed May 9, 2016, <https://www.cbp.gov/travel/us-citizens/know-before-you-go/prohibited-and-restricted-items>.

copyrights, and patents threatening the health and safety of American consumers, the American economy, and national security. The CBP mission statement includes the fitting line, “We steadfastly enforce the laws of the United States while fostering our Nation's economic security through lawful international trade and travel.”<sup>39</sup> According to the CBP IP facts sheet, “CBP also issues civil fines and, where appropriate, refers cases to other law enforcement agencies for criminal investigation.”<sup>40</sup>

The CBP traditionally works with and inspects the military in deployed environments before equipment and personnel redeploy to the home station. These inspections are very thorough during this redeployment process. Every single box or bag undergoes heavy scrutiny in every single container. If the CBP cannot fulfill the requirements in these areas with their personnel, they train individuals from the unit and certify them to act on the behalf of the customs agents. The CBP previously used the Customs and Border Clearance Agent (CBCA) Program to train unit inspectors to pre-clear units redeploying.<sup>41</sup> However, the program shows as currently suspended as of November 13, 2015 on the CBP website. This suggests issues arose in the CBCA program in 2015. CBP and their trained representatives are a critical part of the issue in this research. They are the last bastion before the material enters through the U.S. border

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<sup>39</sup> U.S. Customs and Border Protection, “About CBP,” accessed April 4, 2016, <http://www.cbp.gov/about>.

<sup>40</sup> U.S. Customs and Border Protection, “Intellectual Property Rights Fact Sheet,” accessed April 4, 2016, <http://www.cbp.gov/sites/default/files/documents/IPR%20Fact%20Sheet%202014%20UPDATE%20FINAL.pdf>.

<sup>41</sup> U.S. Customs and Border Protection, “How to Become a Military Customs Inspector,” accessed April 27, 2016, [https://help.cbp.gov/app/answers/detail/a\\_id/910/~how-to-become-a-military-customs-inspector](https://help.cbp.gov/app/answers/detail/a_id/910/~/how-to-become-a-military-customs-inspector).



and is absorbed into the population. A few specific CBP regulations and exemptions are highlighted later in this chapter.

Internationally, the World Trade Organization (WTO) may be the largest proponent to assist in regulation of the protection of intellectual property on a transnational level. As of November 30, 2015, there were 162 member countries in the WTO.<sup>42</sup> Figure 2 depicts the expansive reach of the WTO, which move closer to the developing countries researched. Given the WTO's vast membership throughout the world and their ability to reach agreements to trade disputes, their influence may be able to assist in the regions of interest in this research. Currently Iraq and Afghanistan are not members but Pakistan is. An interesting observation comes from the RAND study, which may affect the effectiveness of the WTO or at least the perception of their primary interests. According to Gregory Treverton, "The WTO does, however, suffer from an image that it protects rich companies at the expense of poor countries, since it requires member states to provide minimum legal protections and remedies for various types of IPR enforcement."<sup>43</sup>

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<sup>42</sup> World Trade Organization, "Members and Observers," accessed December 10, 2015, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm).

<sup>43</sup> Gregory Treverton et al., "Film Piracy, Organized Crime, and Terrorism" (Monograph, RAND Corporation, Santa Monica, CA), accessed October 14, 2015, <http://www.rand.org/pubs/monographs/MG742.html>, 129.



Figure 2. Map of Members of the Members of the WTO as of November 30, 2015

*Source:* World Trade Organization, “Members and Observers,” accessed December 10, 2015, [https://www.wto.org/english/thewto\\_e/countries\\_e/org6\\_map\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/org6_map_e.htm).

Although the WTO is the largest proponent for regulation of the protection of IP, the World Intellectual Property Organization (WIPO) stands at the forefront of shaping international IP policies. The WIPO webpage simply states, “We help governments, businesses and society realize the benefits of IP.” Iraq and Afghanistan are both member states of the WIPO which indicates that they do have a self-realization of the need to elevate this topic within the international community.

#### Organizations that represent the Copyright Holder

The victim’s viewpoint of copyright infringement and cost to them are also important. The Motion Picture Association of America (MPAA) is an organization

backed by six of the largest motion picture studios in the world. Their website states, “We are the voice of one of the country’s strongest and most vibrant industries – the American motion picture, home video and television industry.”<sup>44</sup> The MPAA website references that copyright is essential to the U.S. and world economy.

Today, the U.S. copyright system is a cornerstone of a vibrant creative economy that is unparalleled in the world –adding over \$1 trillion to the national economy and nearly 5.4 million direct jobs in 2012 (IIPA Report, November 2013) and making the United States a world leader in creativity, technological innovation and economic growth.<sup>45</sup>

The International Chamber of Commerce (ICC) research states, “We estimate that, based on 2008 data, the total global economic value of counterfeit and pirated products is as much as \$650 billion every year.”<sup>46</sup> The research showed in 2008 that digitally pirated music, movies, and software accounted for between \$30 billion and \$75 billion. 2.5 million jobs were destroyed because of counterfeiting and piracy. However, the research forecasted numbers for 2015 to be as much as between \$80 billion and \$240 billion for digitally pirated products and the global value of all counterfeit and pirated products to be as much as \$1.77 trillion.<sup>47</sup> These numbers show the vast impact of piracy on the U.S. economy, as well as why legislating bodies are working with organizations worldwide to protect IP.

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<sup>44</sup> Motion Picture Association of America, “Our Story,” accessed April 4, 2016, <http://www.mpaa.org/our-story/>.

<sup>45</sup> Motion Picture Association of America, “Why Copyright Matters,” accessed April 4, 2016, <http://www.mpaa.org/why-copyright-matters/>.

<sup>46</sup> Frontier Economics, 3.

<sup>47</sup> Ibid.

## History of Pirated Media

The activity of counterfeiting dates back to the Iron Age as seen in fake coins found from that era.<sup>48</sup> Media such as music, movies, and software has only been the major subject of piracy for a little over 35 years. Not long after media in VHS and Betamax tape format hit the market to the public, the public learned how to manipulate the product to suit their needs. In 1984, a Supreme Court case ruled, that despite the lament of major movie studios, that SONY could continue to market recordable tapes to the public.<sup>49</sup> To counter, movie distributors would attempt to create copy protection on VHS tapes, but bootleggers would find various ways around the copyright protections. In smaller countries around the world, VHS tapes are still popular and being pirated.<sup>50</sup>

As previously mentioned, in 1999, Napster, a peer-to-peer service for sharing files, grew to enormous popularity. The collective users allowed other members of Napster to access their music files on their computer while also being able to access everyone else's files.<sup>51</sup> A mentality developed that because it was possible to share this music so easily, that it was the public's right to access this music with their Napster network of friends. The Recording Industry Association of America (RIAA) sued Napster

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<sup>48</sup> Sven Kalmring, "Of thieves, counterfeiters and homicides: Crime in Hedeby and Birka," *Fornvännen: Journal of Swedish Antiquarian Research* 105, no. 4 (2010): 283-284, accessed April 4, 2016, [http://samla.raa.se/xmlui/bitstream/handle/raa/3255/2010\\_281.pdf?sequence=1](http://samla.raa.se/xmlui/bitstream/handle/raa/3255/2010_281.pdf?sequence=1).

<sup>49</sup> Donnie Jenkins, "Betamax, Napster Good Examples of Content Battles," *Chattanooga Times Free Press*, July 30, 2010, accessed October 29, 2015, <http://www.timesfreepress.com/news/life/entertainment/story/2010/jul/30/betamax-napster-good-examples-content-battles/24939/>.

<sup>50</sup> Treverton et al., 36.

<sup>51</sup> A&M Records, Inc. v. Napster, Inc.

which shut down just over two years later. However, the age of digital piracy and immediate mass distribution had begun.<sup>52</sup>

Today, the ease of ripping music, movies, and software has been largely propagated by the advent of the home computing industry. The RAND Corporation identifies three key reasons media piracy is an attractive activity; low barrier to entry, high profit, and low risk.<sup>53</sup> The practice has a low barrier to entry because of the minimal costs associated with pirating and minimal knowledge needed to perpetrate the act. The materials of the trade are cheap, and normally require; blank DVDs, a way to burn media onto the disc, and a computer with some basic software. If DVDs are ripped from an original source, then cracking software may be needed. Further, bootleggers use a recording device if the movie is recorded in a movie theatre. Virtually anyone with basic computing skills has the ability to start pirating media. Furthermore, the pirates get free advertising for their goods from the original movie studios.

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<sup>52</sup> Jenkins.

<sup>53</sup> Treverton et al., 39.

## Stages and Forms of Film Piracy

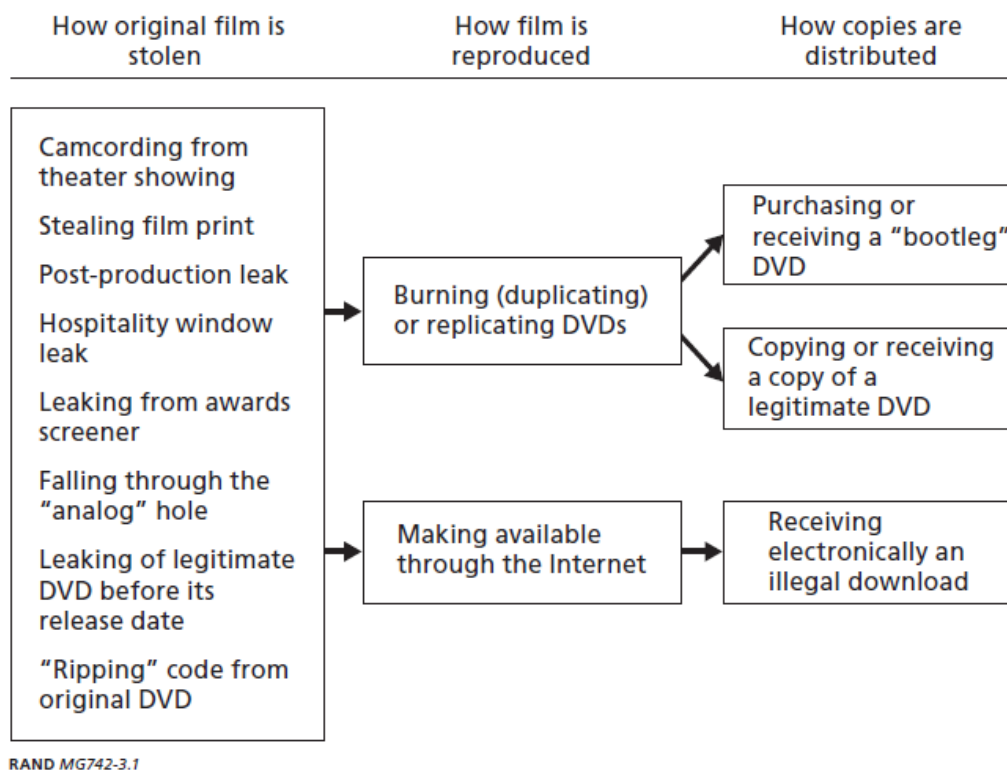


Figure 3. Stages and Forms of Piracy

*Source:* Gregory Treverton et al., "Film Piracy, Organized Crime, and Terrorism" (Monograph, RAND Corporation, Santa Monica, CA), accessed October 14, 2015, <http://www.rand.org/pubs/monographs/MG742.html>, 37.

As seen in figure 3, there are several methods to steal the original film in piracy. The bazaars in Iraq and Afghanistan sell the media via DVD or VCD which is another form of media on optical disc. These discs then propagate throughout the Soldiers in the deployed environment. This happens either through purchase in bazaars or copied from a friend. Commercial internet is also available to Soldiers in deployed environments now as well. Commercial internet access in deployed areas, while slow, does not normally

block websites to peer-to-peer networks, thus opening another facet to gain this material through.

In addition to a low entry cost, media pirates are attracted to this activity because of the high payoff. The cost to make copies of the movies equates to pennies for the pirates, yet they charge a few dollars for every DVD sold.<sup>54</sup> “DVD piracy, which has a higher profit margin than narcotics and minimal risks of enforcement, is attractive around the world as an element of criminal portfolios that also include drugs, money laundering, extortion, and human smuggling.”<sup>55</sup>

The last key reason pirating is an attractive activity for pirates is the low risk involved. Terrorists and organized crime members use media piracy for raising funds because of the smaller penalties and the smaller number of arrests. Again, according to Treverton, “For instance, under French law, selling counterfeit products is punishable by a two-year prison term and a 150,000 fine, while selling drugs is punishable by a ten-year prison term and a 7,500,000 fine.”<sup>56</sup> This is a substantial difference when putting the acts of the criminals aside and looking at the event as raising funds for their organization. The low risk involved also applies to the consumer as well as the distributor. According to the RAND study, “people who buy counterfeit DVDs for their personal consumption are rarely, if ever, arrested by law enforcement.”<sup>57</sup> Fortunately for the victims, legislation around the world may change the harshness of consumer penalties. However,

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<sup>54</sup> Treverton et al., 27.

<sup>55</sup> Ibid., xii.

<sup>56</sup> Ibid., 29.

<sup>57</sup> Ibid., 30.

unfortunately, the problem remains. The following statement may best summarize why consumers don't take the crime of media piracy seriously, "While the purchase of a pirated DVD is illegal in some countries, such as Italy, confiscation of the property, a verbal reprimand, or, in even rarer cases, a small fine is usually the most severe penalty that will be applied."<sup>58</sup>

Even more disturbing is copyright piracy, as criminals are using the same distribution network as other criminal activities. Criminals are attempting to control the entire chain from production, shipment, and street sales.<sup>59</sup> The RAND study finds critical links between terrorism, organized crime and pirated media. The study stated, "For example, in one case documented in this report, a simple arrest at a United Parcel Service (UPS) store for shipping illegal DVDs led to the exposure of a large-scale human-trafficking ring."<sup>60</sup> While the study suggests there is an implied link between terrorism and media piracy such as the first World Trade Center attack, the link between organized crime and media piracy is more definitive. The study goes on to state, "There is a clear need for additional global intelligence gathering and sharing to further illuminate the scope and nature of the connections between piracy and organized crime."<sup>61</sup> Many think media piracy is a victimless crime, but this is not true as seen by the RAND case.

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<sup>58</sup> Ibid., 30.

<sup>59</sup> Ibid., xii.

<sup>60</sup> Ibid., xv.

<sup>61</sup> Ibid., xv.



### Cases of Personal Liability and Punishment

No cases exist or are available involving Soldiers punished for media piracy in deployed environments. However, civil cases are becoming more from enforcing agencies and organizations that monitor copyright and IP. There are numerous cases of enforcement agencies cracking down on individuals distributing this content.<sup>62</sup> To date, the majority of users identified as copyright infringers have settled out of court for sums of \$5,000 or less generally.<sup>63</sup> Four cases stand out suggesting a growing trend in regards to personal liability for charged users, not distributors.

The first case involves a 2007 file-sharing copyright violation. In *Capitol Records, Inc. v. Thomas-Rasset*, the defendant, Jammie Thomas-Rasset, faced three different jury trials for twenty-four songs she downloaded and distributed on a peer-to-peer network.<sup>64</sup> This civil court case found her liable for statutory damages of \$1.92 million at one point during the proceedings, which is \$80,000 per song. Eventually, the court remitted the award to a maximum of \$220,000.

The second case involves a 2009 file-sharing copyright infringement. In *Sony BMG Music Entertainment et al. v. Tenenbaum*, the defendant, Joel Tenenbaum, stood trial for thirty songs he downloaded and distributed on a peer-to-peer network.<sup>65</sup> This

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<sup>62</sup> Federal Bureau of Investigation, "Collections: Intellectual Property Theft," accessed April 30, 2016, <https://www.fbi.gov/collections/intellectual-property-theft>.

<sup>63</sup> Denise Lavoie, "Jury Orders Student to Pay \$675,000 for Illegally Downloading Music," *ABC News*, accessed October 29, 2015, <http://abcnews.go.com/Business/story?id=8226751&page=1>.

<sup>64</sup> *Capitol Records, Inc. v. Thomas-Rasset*, No. 11-2820 (8th Cir. 2012).

<sup>65</sup> *Sony BMG Music Entertainment, et al v. Tenenbaum*, No. 10-1883 (1st Cir. 2011).

civil court case found him liable for statutory damages of \$675,000, which is \$22,500 per song. These first two cases are important because they denote a derivation from enforcement agencies going after distributors of copyright infringement to users who partake in seeking out and downloading infringing content.

The third case highlighted case occurred in 2011. This case highlights that there is a worldwide initiative in increasing enforcement of copyright law and that no one is seemingly exempt from the laws. In Sweden, a fifteen-year-old boy faced a two-year sentence in jail for twenty-four movies he downloaded and distributed on a school computer.<sup>66</sup> The school headmaster supposedly called the police perceiving the action as a crime instead of handling the incident locally. The outcome of the trial remains unpublished; however, this case shows that age, student status, and location are irrelevant in the eyes of enforcement agencies.

The final case(s) highlighted may never go to trial at all. The U.S. Copyright Group, which represents the movie studio Voltage Pictures, is suing 24,583 peer-to-peer users for downloading the movie “The Hurt Locker.”<sup>67</sup> The U.S. Copyright Group is seeking to settle out of court with the users for amounts ranging between \$1,000 to \$3,000; however, are threatening judgement recommendations of \$150,000 if they go to trial.<sup>68</sup> The group has received the names of the 24,583 users from ISPs seeking to remain

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<sup>66</sup> Matthew Humphries, “15-Year-Old Facing Jail Time for Downloading 24 Movies,” *Geek.com*, August 24, 2011, accessed October 29, 2015, <http://www.geek.com/news/15-year-old-facing-jail-time-for-downloading-24-movies-1415467/>.

<sup>67</sup> Sarah Jacobsson Purewal, “‘Hurt Locker’ Lawsuit Targets 24,583 BitTorrent Users,” *PC World*, March 24, 2011, accessed October 26, 2015, [http://www.pcworld.com/article/228519/Hurt\\_Locker\\_Lawsuit\\_Targets\\_24583\\_BitTorrent\\_Users.html](http://www.pcworld.com/article/228519/Hurt_Locker_Lawsuit_Targets_24583_BitTorrent_Users.html).

<sup>68</sup> *Ibid.*

compliant with increasing responsibilities through legislation. This is the second time that the U.S. Copyright Group has performed an act such as this; the last suing 23,322 users. These cases are important as they show that cooperation between the ISPs and studios are leveraging new methods for the studios to recoup their money from media piracy by suing users.

### History of Media Piracy in Afghanistan

Chapter 2 up to this point has examined mostly how a developed country views legislation and enforcement of the protection of intellectual property and copyright. It is critical to look at the viewpoint from developing nations, as they are normally the most heavily involved in military bazaars. Further, those nations have different backgrounds, economic structures, and cultural heritage behind the situation.

The United Nations (UN) partners with other organizations around the world to report and forecast the World Economic Situation and Prospects (WESP) report. This report classifies nations based on many factors, but relies heavily on the average income per capita for its citizens. “For analytical purposes, WESP classifies all countries of the world into one of three broad categories: developed economies, economies in transition and developing economies.”<sup>69</sup> Essentially, developed countries have the economic and industrial progress to set them apart from the other two categories. Although Iraq currently seems to be moving to an economy in transition, this research will classify Afghanistan and Iraq as developing countries or nations based on the timeframe of U.S. deployments were involved with the nations. This section will mostly pertain to the

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<sup>69</sup> United Nations, *World Economic Situation and Prospects 2016* (New York: United Nations Publications, 2016), 157.

history of Afghanistan for relevancy of revealing the history of copyright in developing nations. Both Iraq and Afghanistan has similar backgrounds in regards to this topic. In 2010, professor and author of film and media studies, Barbara Klinger, wrote a case study entitled “Contraband Cinema: Piracy, Titanic, and Central Asia” about the transnational circulation of film. Klinger writes the following passage about the decades of authoritarian in Afghanistan.

During the last forty years alone, Afghanistan has seen almost continuous civil war, while being invaded and occupied by the Soviet Union (1979–1989) and the United States (since 2001). After the Soviet departure, a fractious coalition of mujahideen (roughly translated as “holy warriors” or “freedom fighters”) and territorial warlords attempted governance. One group of mujahideen, the Taliban, successfully gained control of Kabul in 1996, and of much of the rest of the country by the end of 2000. During this time the Taliban instituted order through a strict interpretation of Shariah, Islamic law.<sup>70</sup>

Afghanistan would constitute as one of the least developed nations in the world given its history of economic and political upheaval.<sup>71</sup> The nation has not had any chance to build a growing economy that can interact with its neighbors, let alone the rest of the world. Klinger’s case study also mentions on the Taliban, “Among other things, they placed severe restrictions on women’s lives and also prohibited music, cinema, television, and the Internet as non-Islamic or as influenced by the West.”<sup>72</sup> This restriction on

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<sup>70</sup> Barbara Klinger, “Contraband Cinema: Piracy, Titanic, and Central Asia,” *Cinema Journal* 49, no. 2 (Winter 2010): 112, accessed October 1, 2015, <https://muse.jhu.edu/>.

<sup>71</sup> United Nations, 163.

<sup>72</sup> Stephen Tanner, *Afghanistan: A Military History from Alexander the Great to the Fall of the Taliban* (Cambridge, MA: DaCapo Press, 2002), especially 221–320; Ahmed Rashid, *Taliban: Militant Islam, Oil, and Fundamentalism in Central Asia* (New Haven, CT: Yale University Press, 2001); Human Rights Watch, “Backgrounder on Afghanistan: History of the War,” October 23, 2001, accessed March 23, 2007, <http://www.hrw.org/backgrounder/asia/afghan-bck1023.htm>. Quoted in Klinger, 112–113.

technology and Western influence came about during the digital revolution that the rest of the world was experiencing.

The importance of the Hollywood blockbuster *Titanic* at the end of this authoritarian rule was also explored to in the case study. The Taliban restrictions left most parts of the country ignorant of all things Western. Sometime during 2000-2001, the pirated movie was smuggled across the border from Pakistan into the capital city of Kabul. Although the movie was forbidden, the citizens were enamored by the story and the *Titanic* phenomenon spread throughout the city like wildfire. Young men were sporting the Leonardo DiCaprio haircut secretly and wearing turbans to cover it up. Barbers that cut their hair and those that wore the hairstyle were jailed or beaten. Within two years of this phenomenon, Taliban rule was suppressed and U.S. and NATO forces took over in Afghanistan. This phenomenon was the beginning of a surge of pirated media coming from Pakistan as the Afghani people learned about the world around them was changing. Klinger states, “Clearly, there would be no Titanic phenomenon in Afghanistan without piracy: the film’s illegal copying and circulation and the ensuing unlicensed proliferation of tie-in goods.”<sup>73</sup> Once the U.S. forces established bases and allowed locals to sell in the bazaars, it was only a matter of time before the Afghanis realized that selling the newfound pirated media would offer them such benefits.

### Clash between worlds

Now that the background behind developed and developing countries has been explored in regards to copyright, the relevant documentation surrounding the U.S. Soldier

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<sup>73</sup> Klinger, 115.

in this situation requires exploration. Little documentation exists from military, legislating bodies, or enforcement agencies concerning media sales at bazaars on military bases. However, a few sources highlight that DoD and enforcement agencies are aware of the potential piracy.

The first source is the CBP directive NO. 2310-005B: Copyright Protection, which provides compliance publications outlining interpretation of U.S. code of law.<sup>74</sup> The determination of infringement upon inspection depends on an average custom inspector's ability to detect pirated material.<sup>75</sup> Copyright infringement falls into two categories, Clearly Piratical and Possibly Piratical. The directive states, "The first of these, "Clearly Piratical" is defined as overwhelming and substantial similarity between the copyrighted elements of the protected work and the imported item so as to clearly indicate that one work was based upon the other."<sup>76</sup> Items found to be Clearly Piratical may be seized by the CBP depending if the item is recorded with the U.S. Copyright Office and the owner may face fines or punitive actions by a court of law.<sup>77</sup> The directive states, "The second, "Possibly Piratical" encompasses those situations in which articles are suspected of constituting piratical copies, but are not clearly deemed to be such at the

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<sup>74</sup> U.S. Customs and Border Protection, Customs Directive NO. 2310-005B, *Copyright Protection*, December 12, 2001, accessed May 9, 2016, [https://www.cbp.gov/sites/default/files/documents/copyright\\_pro\\_3.pdf](https://www.cbp.gov/sites/default/files/documents/copyright_pro_3.pdf).

<sup>75</sup> U.S. Customs and Border Protection, Customs Directive NO. 2310-005B, sec 6.3.

<sup>76</sup> *Ibid.*, sec 6.3.2.

<sup>77</sup> *Ibid.*, sec 6.4.1.

time of presentment.”<sup>78</sup> Possibly Piratical items may only be detained by the CBP if reasonable suspicion is detected and the work is recorded with U.S. Copyright Office.<sup>79</sup> CBP has five days to determine a decision if suspicion remains.

The CBP also releases an informed compliance publication entitled, *What Every Member of the Trade Community Should Know About: CBP Enforcement of Intellectual Property Rights*. This publication offers additional guidance based on the CBP interpretation of the code of law for international travelers with potentially counterfeit material. Section 5 of this document outlines some exemptions for personal use of trademarks, a different but closely related branch of intellectual property. However, the clause that most DVDs brought back from Iraq and Afghanistan fall under suggest the rule derives from this example given in section 5.

Under 19 U.S.C. § 1526(d), a traveler arriving in the United States with merchandise bearing a protected trademark may be granted an exemption to the import restrictions. Under the personal use exemption, a traveler may import one article of the type bearing a protected trademark. For example, a person arriving in the U.S. with three watches bearing an unauthorized mark (whether each watch bears the same mark or different marks) is allowed to retain only one watch. This exemption applies to goods bearing a counterfeit or confusingly similar version of a registered and recorded trademark, or otherwise restricted gray market article. The exemption is applicable only if the article (1) accompanies a traveler to the United States, (2) is for personal use and not for sale, and if (3) the traveler has not been granted an exemption for the same type of article within 30 days preceding his or her arrival. See 19 CFR § 148.55.<sup>80</sup>

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<sup>78</sup> Ibid., sec 6.3.2.

<sup>79</sup> Ibid., sec 6.5.

<sup>80</sup> U.S. Customs and Border Protection, “What Every Member of the Trade Community Should Know About: CBP Enforcement of Intellectual Property Rights,” August 2012, accessed May 9, 2016, [https://www.cbp.gov/sites/default/files/documents/enforce\\_ipr\\_3.pdf](https://www.cbp.gov/sites/default/files/documents/enforce_ipr_3.pdf), 10.

In other words, customs should approve and allow Soldiers to bring back one pirated DVD back to the U.S. with their personal bags. Chapter 2 previously annotated some of the details of the Customs and Border Clearance Agent (CBCA) program experienced by the author. This training, and the method of inspecting redeploying units for all three of the author's deployments, followed this personal use exemption rule with one exception. Soldiers were allowed to bring back one copy of each DVD of each title. For example, a Soldier redeploying with a DVD case of 100 DVDs falling under Clearly Piratical or Possibly Piratical were allowed to retain only all 100 DVDs given that there were no duplicate titles within the book.

The Freedom of Information Act (FOIA) has allowed the release of a Multi-National Force Iraq (MNF-I) document directed to the MPAA stored on CENTCOM FOIA library. This MNF-I document is entitled *MNF-I Talking Points: PIRATED MOVIES IN IRAQ*. The background of the document implies that *USA Today* wrote an article about media piracy occurring on base in Iraq.<sup>81</sup> *USA Today* then wrote to the MPAA to ask for comments. The MPAA redirected the question to the U.S. Embassy in Iraq who redirected the MPAA to MNF-I for clarification. The date of the document is April 20, 2008. The document lists three talking points and provides four questions that were presumably asked of them and gives answers to those questions. This document is critical, because it appears as the only publicly released message from a DoD representative pertaining to the DoD stance on the pirated media sales in on-base bazaars.

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<sup>81</sup> Multi-National Force Iraq (MNF-I), *MNF-I Talking Points: Pirated Movies in Iraq* (MacDill AFB, FL: U.S. Central Command, April 20, 2008), accessed April 4, 2016, [https://www6.centcom.mil/FOIA\\_RR\\_Files/5%20USC%20552\(a\)\(2\)\(D\)Records/Pirated%20Movies%20on%20Coalition%20Bases%20in%20Iraq/N8-Doc%20for%20Release%2009-0191.pdf](https://www6.centcom.mil/FOIA_RR_Files/5%20USC%20552(a)(2)(D)Records/Pirated%20Movies%20on%20Coalition%20Bases%20in%20Iraq/N8-Doc%20for%20Release%2009-0191.pdf), 1.



The document leads with a theme which reads, “Coalition forces respect the right of movie producers to make a profit from their creative endeavors. Coalition-controlled stores, including all AAFES facilities, prohibit the sale of pirated movies, television shows, and other media.”<sup>82</sup> This statement covers the first two talking points: respect for rights of the producers and AAFES prohibition of pirated media sales. The third talking point references DoD’s long-standing positive relationship with the entertainment industry.<sup>83</sup> All four questions and answers given in the MNF-I paper can be found in Appendix A of this thesis. Reviewing the questions with the full answers provide a glimpse of the importance of this single document.

### Conclusion

The literature review allowed a comprehensive study on the differences between the way developed and developing countries view copyright. An initial assessment derived from the review shows that viewpoints of the situation allow for very different and profound beliefs with the handling of IP and copyright. The way a legislator or enforcement agency views the situation in a developing country is substantially different from a newly liberated vendor in a developing country who has lived under authoritarian rule his whole life. This research will continue to analyze if DoD policy is sufficiently written and enforced to manage such a complex situation. The pertinent information specified in Chapter 2 will allow fulfillment of the secondary questions in Chapter 4. Chapter 3 will specify the framework and research methodology used for this study.

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<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

## CHAPTER 3

### RESEARCH METHODOLOGY

This thesis will focus primarily on qualitative research throughout its entirety. During preliminary research, an apparent lack of quantitative data on this subject suggests the most applicable methodology for this topic is a documentation review method. This method involves reviewing case studies, legislation, policies, quantitative reports, and qualitative publications related to the area of interest. Based on the literature reviewed, the author deciphered a graphic depiction of his interpretation of the operational environment as seen in figure 4. Chapter 4 will analyze this operational environment using the operational approach found in figure 5. The ability to answer the primary and secondary questions based on the operational approach allows the researcher to answer the primary research question and offer sound initial recommendations.

#### Operational Environment

The literature review provides the first step in the research methodology for this thesis. Based on the literature review, the operational environment graphic at figure 4 depicts the complexity of the situation of copyright infringement in the bazaars on base. Construction of the current operational environment allows the extraction of themes from the literature sorted to determine an operational approach. The key actors involved locally are the vendors selling the material, the U.S. Soldier buying the material, the local military leaders who facilitate and monitor the bazaar arrangement, and the voice of the victims; the producing studios. Each of these actors incorporates various responsibilities and roles of other contributors backing their viewpoint and beliefs. Chapter 4 develops

the relationships between the themes and contributors to help determine if DoD policy upholds copyright protection at the bazaars.

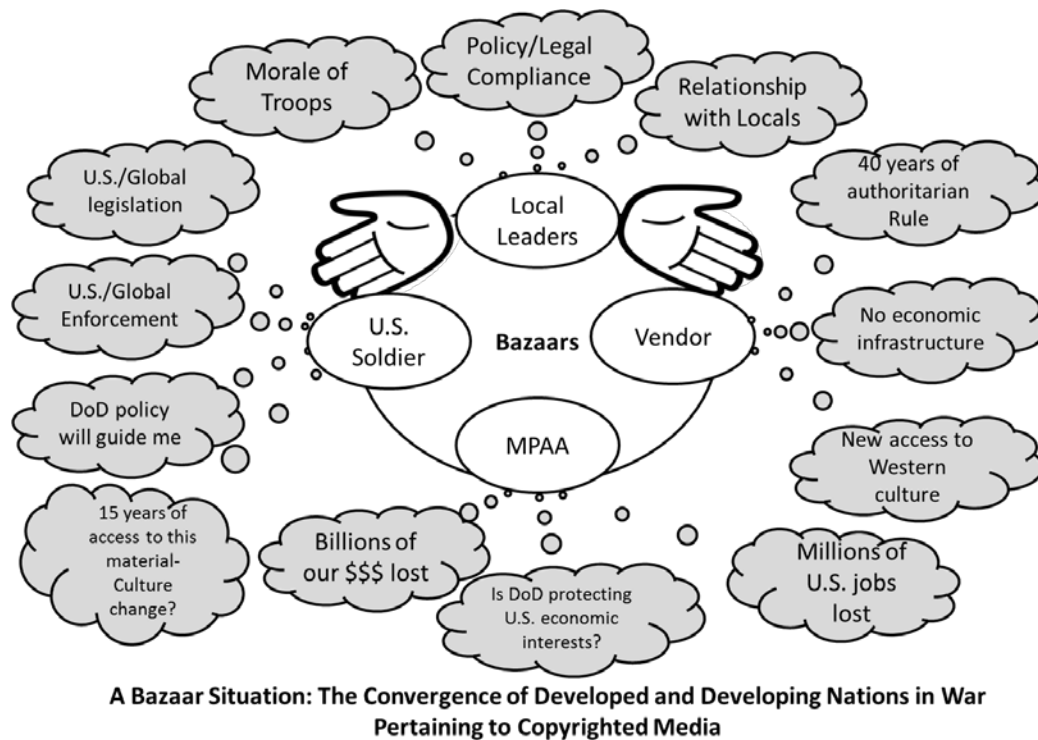


Figure 4. Operational Environment

*Source:* Developed by the author.

### Operational Approach

Applying an operational approach to organize and analyze the information constitutes the second step of the research methodology. Many factors have led to the current environment surrounding media piracy at the bazaars. Figure 5 provides the main threads contributing to the situation from a developed U.S. perspective. They are the

history and culture of copyright legislature, enforcement, DoD policy, and voice of the intellectual property owners through bodies such as the Motion Picture Association of America (MPAA). The main threads contributing to the situation from a developing occupied country's perspective are the history and culture of the local people. The advent of technology provides the opportunity to bring movies to the home audience, the ability to circumvent the copyright protection measures, and the ability to host and distribute this content through means such as the internet which spans both U.S. and occupied countries threads.

These threads from the perspective of participating countries all provide context contributing to the varying degrees of interpretation on copyright in the bazaar environment. The DoD and local leaders on ground in Iraq and Afghanistan made decisions based on the various threads contributing to the decision. The decision-making process of these leaders and their input prevail as an important overlay to the operational approach of this topic. These decisions have framed the environment that is present in the bazaar for the vendors to sell and the Soldiers to patronize. Finally, this environment shapes the culture of the Soldiers, especially considering these bazaars have been available for Soldiers with multiple deployments for nearly fifteen years; potentially three fourths of an active duty Soldier's career.

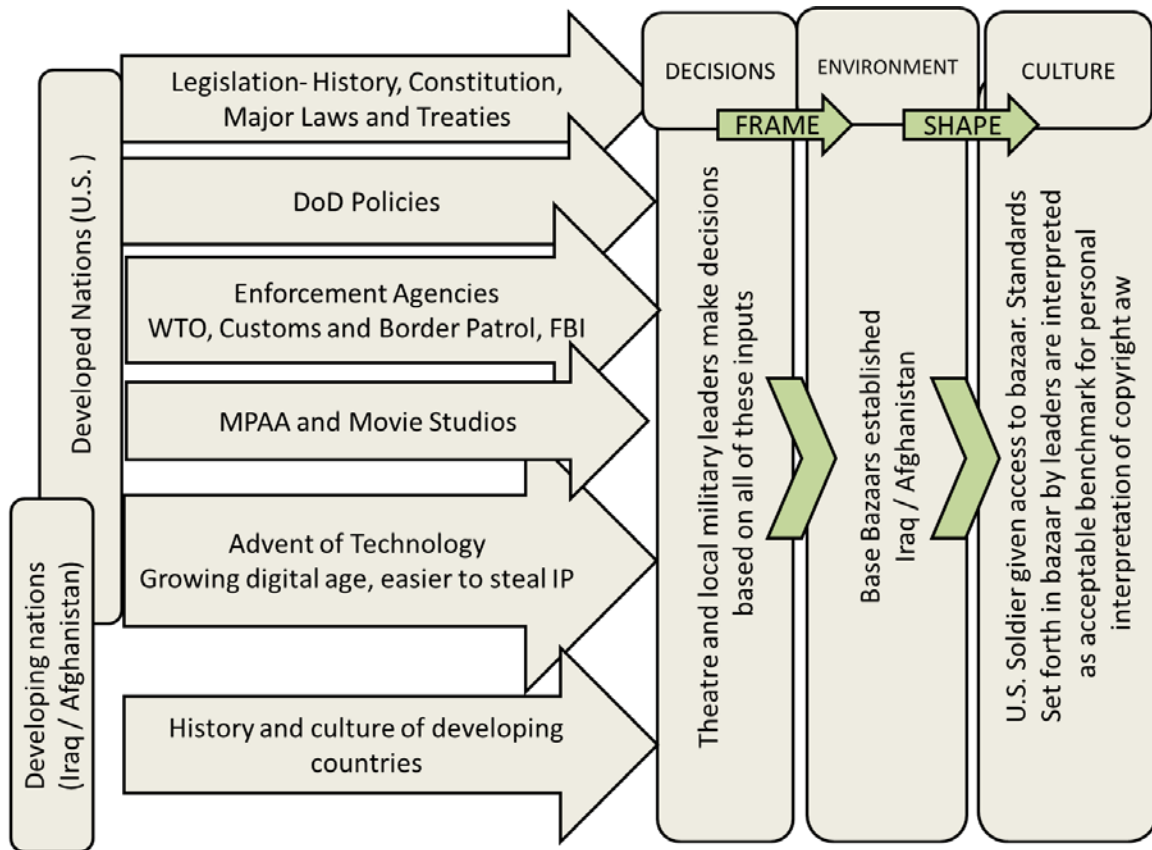


Figure 5. Operational Approach to Organizing Research

Source: Developed by the author.

### Evaluation Criteria

Evaluating the policies is the third step in the research methodology. If the DoD has effectively articulated their policies, there should be no gaps between the legislation, DoD policy, and cooperation in enforcement. The policies should be clear to both U.S. Soldiers and local nationals selling goods in bazaars. However, if gaps or loopholes remain, a claim that DoD policies are not effective warrants policy makers to readdress the problem. The author will form a recommendation for optimal practices regarding media copyright given current DoD policy. Furthermore, the conclusions drawn from this

research may be able to facilitate a starting point for further research on this topic in other areas of the world or to other organizations.

Ideally, the answers to the secondary questions form the measure of the effectiveness of the primary research question “How effective are DoD policies on copyrighted media?” Table 1 depicts the evaluation criteria used in Chapter 4 to answer the secondary questions. The secondary questions are somewhat nested, and the implications of question 1 lead to conclusions coming out of question 4. Question 1 will determine if legislation, policies, and enforcement align. The primary question contains more implications than just alignment of policy sought in question 1. The effectiveness of the policy also must take into consideration the implications of culture change, interaction with developing countries, and how this policy could affect the future which questions 2 through 4 should answer.

Table 1. Evaluation Criteria	
Secondary Question	Measure of Effectiveness
Q1-What are the U.S., DoD, and transnational policies on copyright in regards to pirated media?	Do they align with each other and with enforcement?
Q2-What are the prime cases used as reference for these policies and were there consequences for infringement?	Are these cases applicable to Soldiers or leaders now or in the future?
Q3-What cultural effects did these cases have on their organization?	Did those cases cause negative action on the individuals involved which could similarly affect a Soldier?
Q4-How does media piracy affect Afghanistan and Iraq as nations and their cultural identity?	Did access to media piracy affect the nation negatively or positively?
Q5-What additional effects can existing policies have on the United States military?	What could the future environment look like if Q1-4 continue on current path?

*Source:* Developed by the author.

### Bias and Assurance of Legitimacy

There is a certain amount of bias posing a threat to the validity of the research initially based on the author's experience and profession in the military. The confirmation bias looms above all as the tendency to seek for evidence and information in the research which confirms or complements preconceived notions the author already had. To avoid this bias, the author has structured his operational approach and methodology to seek out the viewpoints of the various actors who have some part to play in the sales of pirated media in the bazaars in Iraq and Afghanistan. This is essential for the literature review and the analysis sections of this research to ensure the prevalence of unbiased data and the unbiased analysis of that data.

Assurance of legitimacy is also a threat to this research. Given that there is little published from DoD on the sales of pirated media in the bazaars in Iraq and Afghanistan, the information collected needs to be vetted appropriately to ensure legitimacy. Every attempt will be made to draw from professional books and periodicals; however, there is a certain amount of pertinent information that will need to be gathered from other sources. Some of those outlets will be from news sources reporting the situation, reports and websites of organizations that represent the victims of media piracy, and experiences drawn from the author and published works from others who have witnessed the event in the bazaars.

### Conclusion

The qualitative research methodology used throughout this research is the most appropriate way to approach this topic. Media Piracy and copyright protection within the bazaars on U.S. bases have remained undiscussed topics for nearly fifteen years. Despite the lack of specific case studies on the subject, using the appropriate evaluation criteria on the information framed in the operational approach with an unbiased judgement will yield an educated answer to the primary question. Chapter 4, provides an analysis of the qualitative information gathered in chapter 2.



## CHAPTER 4

### ANALYSIS

#### Introduction

It is easy to determine that the vast majority, if not all of the material offered for DVD sales in bazaars fall under the category of pirated media. Much of this material witnessed by the author's experience both Iraq and Afghanistan are blatant pirated movies. Often, the camera work is shaky and the person recording is obviously sitting in a movie theater pointing a recorder at the screen while people talk in the background. Similar stories have been reported in news sources such as *Stars and Stripes* about pirated movies of lesser quality than standard DVD releases bought at the Post Exchange (PX).<sup>84</sup> These vendors at the bazaars have copied the movies without the consent of the copyright holder and not distributed in accordance with the copyright holder's rights in mind. Since the material in this environment is pirated material, the question remains, "How effective are DoD policies on copyrighted media?" Answering the secondary questions assist in determining the answer to the primary question.

#### Policy Comparison

What are the U.S., DoD, and transnational policies on copyright in regards to pirated media? The first question seeks to determine if the national and international legislation, defense policies, and enforcement agencies align with each other. If they do not align then, the policy U.S. troops follow is potentially not completely effective and needs clarification. Chapter 2 outlined the basic copyright laws, military agencies

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<sup>84</sup> Harris.

involved with intellectual property (IP) and policy on IP, and regulatory agencies who serve as the watchdogs of copyright for the U.S. and its interactions with the world. The research found that the U.S. has a distinct foundational protection of copyright and IP through legislation such as the Constitution, the Copyright Act of 1976, and the DMCA. This legislation is not contradictory and is rooted in our nation's founding. As technology evolved over the past forty years, the legislation has needed to adapt to ensure protection of the copyright holder. The landscape of the digital terrain has grown and finding appropriate and fitting legislation to match the unique trials the growing technology offers has become more challenging. Enforcement of these rights remains just as challenging as integrating the U.S. into the worldwide protection of IP.

Worldwide treaties such as the Berne Convention of 1886 and organizations such as WTO and WIPO, which the U.S. are members of both, stand to protect IP and copyright regardless of locality. As new nations integrate into the collective, the global perspective on copyright protection enlarges and becomes more difficult. In the U.S., the FBI stands as the lead investigative agency for copyright infringement along with the Homeland Security Investigations department. To spread knowledge of their intent to investigate and prosecute individuals committing copyright infringement, the FBI includes a message at the beginning of every movie produced or sold in the U.S. Every individual watching a movie made in the U.S. is aware piracy is a crime.

The Customs and Border Protection Agency serves as the complementary agency to the FBI by not only enforcing copyright protection within the U.S., but also ensuring that piracy perpetrated in other nations stays out of the U.S. Again, the Customs and Border Protection (CBP) mission statement proclaims, "We steadfastly enforce the laws

of the United States while fostering our Nation's economic security through lawful international trade and travel.”<sup>85</sup> Besides issuing civil fines, the CBP also works in conjunction with other agencies like the FBI to stop media piracy from affecting economic security.

The research showed that CBP also works closely with the military in OEF/OIF by performing searches on all military and personal equipment redeploying home. The CBP regulations do account for personal use of gray market counterfeit items; however, there are restrictions on the exceptions.<sup>86</sup> This is the first major discrepancy between policies found in the research. The customs teams have been allowing Soldiers to bring personal collections of pirated media back to the U.S. to include one clearly or possibly pirated DVD per title as long as there are no duplicates. Again, the training the author received under the Customs and Border Clearance Agent (CBCA) program and the method of inspecting redeploying units for all three of the author’s deployments followed this interpretation of the personal use exemption rule.<sup>87</sup> Yet, the CBP personal use exception rule documented in the publication *What Every Member of the Trade Community Should Know About: CBP Enforcement of Intellectual Property Rights* for these items only allows one clearly or possibly pirated DVD, not one DVD per title, to

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<sup>85</sup> U.S. Customs and Border Protection, “About CBP.”

<sup>86</sup> U.S. Customs and Border Protection, *What Every Member of the Trade Community Should Know About*, 10.

<sup>87</sup> U.S. Customs and Border Protection, “How to Become a Military Customs Inspector.”

return to the U.S. with the individual's personal baggage.<sup>88</sup> The example given is that of three watches counterfeit watches all with different marks, yet the individual can only bring back one watch, not one watch per counterfeit trademark.

The intent of both methods of interpretation is to prevent a Soldier from purchasing large quantities and then becoming a distributor. However, the method applied to Soldiers does not prevent the Soldier from potentially accumulating hundreds of pirated DVDs over the course of a deployment at a fraction of the cost of retail at the PX. There is an understandable reason the personal use exception is in place for the CBP. The scope of the exception applied to Soldiers does not meet the intent of the CBP regulation and thus the ramifications could be exponentially higher. Regardless, the policies and actions of the CBP in Iraq and Afghanistan for U.S. troops do not align with their homeland mission, or that of their sister agencies (such as the FBI) with whom they work in combating piracy.

The next large discrepancy noted pertains to the Multi-National Forces-Iraq (MNF-I) Talking Points release on pirated movies in Iraq. This document provides the only evidence from a military source found in the research discussing the issue of media piracy in deployed environments. Although, follow-on documents on the outcome of this paper could not be found or similar documents pertaining to piracy in Afghanistan, the MNF-I paper portrays the apparent disposition of the leaders on ground in both countries.

Referring to the paper, talking point one acknowledges some vendors in Iraq were selling pirated media at the time of release in 2008. It also acknowledges that some of

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<sup>88</sup> U.S. Customs and Border Protection, *What Every Member of the Trade Community Should Know About*, 10.

these vendors were operating on or near U.S. controlled operating areas shared with the Iraqi Government. The discrepancy here is the wording which seems defensive in nature and contradictory. This talking point starts with the bold statement that, “The U.S. does not allow the sale of pirated media in Coalition-controlled stores.”<sup>89</sup> The statement focuses on the locality and the ownership or control of the bazaars. However, the U.S. or Coalition has more control over the locality and vendors in the bazaars on these bases than this talking point portrays. These bazaars are setup for the servicemen and women on these bases, not for the local community. The vendors have to go through a screening process to gain installation access. From the authors anecdotal experience on deployments in both countries, the bazaars were located not near Iraqi or Afghani force areas of the compounds, but rather in the area of the base that will allow the easiest access for U.S. forces to visit.

The talking point also states, “We are currently looking into whether any stores currently sell pirated media on U.S. controlled property, and we are determining the appropriate steps to resolve the issue if they do.”<sup>90</sup> This statement is also a discrepancy given that MNF-I headquarters in Iraq was located in Baghdad.<sup>91</sup> The leaders operating at MNF-I and who wrote this Talking Points paper would know the scope of the bazaars on bases in Iraq. They would also realize that access to the installation was controlled by

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<sup>89</sup> Multi-National Force Iraq (MNF-I), *MNF-I Talking Points: Pirated Movies in Iraq*, 1.

<sup>90</sup> Ibid.

<sup>91</sup> CENTCOM News, “Iraq stands up in Baghdad,” January 4, 2010, accessed May 4, 2016, <http://www.centcom.mil/news/news-article/u.s.-forces-iraq-stands-up-in-baghdad>.

Coalition, if not U.S. forces. It may be possible for a base to be controlled by another Coalition nation and have U.S. troops on base in some areas; however, the greater majority of the bases would have been under U.S. control as well as the bazaar areas.

Talking point two asked if MNF-I banned the U.S. Soldiers from visiting shops that sold pirated media. MNF-I answered no comparing the bazaars to flea markets in America. MNF-I mentioned that these shops also sell local culturally related souvenirs. This argument also seems divergent from the ideals and policy of the WTO, WIPO, and the FBI. Just because someone sells perfectly legal goods does not excuse them from selling pirated material harmful to the U.S. economy. If these vendors were selling articles on base that were contradictory to the local General Order #1, such as pornography or alcohol, there is a fair chance that U.S. local leaders would intervene and prohibit the sales of these items. This talking point also briefly mentions prohibiting the sales of pirated material would bring unwelcome secondary effects on Iraqi vendors. More will be discussed on this in secondary question 4. Finally, talking point two states, “We do not condone the purchase of pirated media, and AAFES-operated post exchanges offer a variety of movies that do pay royalties to American movie producers.”<sup>92</sup> This point is most confusing for Soldiers. MNF-I states they do not condone the purchase of pirated materials, yet they allow the sales of this material on base. Furthermore, they allow U.S. forces to go to the shops where DVDs sell at incredibly cheap prices, and expect Soldiers to purchase this material from the PX instead at full price.

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<sup>92</sup> Multi-National Force Iraq (MNF-I), *MNF-I Talking Points: Pirated Movies in Iraq*, 2.

Talking point three aims directly at the point asking if MNF-I banned U.S. troops from buying pirated movies. The answer does not say no. Instead, it stated, “We expect our forces to comply with U.S. law even when deployed overseas, including those laws which govern criminal copyright infringement. Prosecution of violations is left to the discretion of an individual Soldier’s commanding officer.”<sup>93</sup> This statement leaves interpretation of current copyright law in the hands of every U.S. Soldier who visits these bazaars. Thus, in addition to vendors having unrestricted access to selling and Soldiers receiving unrestricted access to the vendors, Soldiers need to decipher the legality of the situation in their own minds. The statement also highlighted that discretion of prosecution falls on commanding officers. This only raises more questions such as what level of commander may prosecute these offenses, and what offered training plan or guidance do these commanders have in order to educate their decisions?

Talking point three also mentions that CBP and the Military Provost Office ensure Soldiers are complying with Federal law. The paper states, “Pirated media items, like bootleg DVDs, will be confiscated upon return to the U.S.” This proves not entirely accurate based on evidence such as the CBP directives and the author’s anecdotal experience previously mentioned. If the CBP and the inspecting officers are not confiscating the materials, who does MNF-I believe will confiscate this material?

DoD policy, at higher levels, is forthright in its foundational message on upholding the rights of the copyright holder. DoD Directive 5535.4 not only mandated that it recognized those rights, but also upholds those rights throughout the DoD’s

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<sup>93</sup> Ibid., 2-3.

worldwide commitments.<sup>94</sup> Deployments to developed countries fall under that umbrella of protection. Both the Army's AR 27-60 and Air Force's Instruction 51-303 both nest their regulations in the DoD directive. Both state that they uphold the rights of the copyright holder. The DoD and service component level General Counsels, obviously have made every attempt to match strategic defense policy to national legislation. The issue with alignment in policy and guidance appears at the junction of the strategic and operational levels in Iraq and Afghanistan. That juncture may also be where the complexity of the problem clouds the judgement. The question remains, how is the protection of IP and copyright weighed against the efforts to nation build and fight wars?

### Prime Cases

What are the prime cases used as reference for these policies and were there consequences for infringement? The most important cases that shaped DVD copyright legislation over the past forty years started with Sony Corp. of Am. v. Universal City Studios debating the legality of "time-shifting." After the Betamax case made home movie piracy a salient topic, A&M Records, Inc. v. Napster, Inc. ushered in a new era of debate about personal use and the technology of peer-to-peer (P2P) sites. The courts eventually shut Napster down, but the prevalence of P2P sites remained which is where many if not most pirated movies debut throughout the world due to its ease of use.

Again, no cases were identified involving Soldiers punished for media piracy in these deployed environments; however, copyright enforcement is turning their aim at users who break the law. The first two civil cases mentioned in chapter 2 were Capitol

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<sup>94</sup> U.S. Department of Defense, Directive 5535.4, 1-2.



Records, Inc. v. Thomas-Rasset and Sony BMG Music Entertainment et al. v.

Tenenbaum. These cases indicate the entertainment industry no longer tolerates piracy of copyright. Both of these cases were examples of users prosecuted for twenty-four and thirty songs, respectively. Both cases ended with the defendants found liable for hundreds of thousands of dollars. The case of the Swedish fifteen-year-old who faced jail time shows sympathy for ignorance also dwindles internationally.

These three cases alone seem like a trivial issue if only three people had been prosecuted. However, the recent actions of the U.S. Copyright Group make the prosecution of Soldiers a potential threat that cannot be ignored. Nearly 50,000 users have been pursued by the group over the copyright infringement of two movies. Settling out of court for around \$3,000 poses a significant problem for most Soldiers. If the case goes to trial and receives a \$150,000 fine, the problem is potentially devastating for any Soldier found liable.

As seen by the case of MGM Studios, Inc. v. Grokster, Ltd., Supreme Court Justice Souter believed that individuals releasing devices used to promote the infringement of copyright material are liable for acts of infringement by third parties.<sup>95</sup> When one compares this statement to the unique situation caused by the bazaars, the level of ownership of the bazaars yields further implications for the U.S. The bazaars may be comparable to devices or forums used to sell a preponderance of pirated material. Future litigation may pose new questions escalating far beyond personal liability asking, “Would the U.S. military be liable for allowing these sales of this material on base in these forums just as Napster, Grokster, and Pirate Bay?”

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<sup>95</sup> MGM Studios, Inc. v. Grokster, Ltd.

### Ethical Cultural Effects

What cultural effects did these cases have on their organization? The War on Terror, OEF, and OIF constitute the U.S.'s longest war. This war occurred just at the advent of an exploding digital age offering new opportunities and threats to those who embraced it. It is only natural to acknowledge that those serving in deployed areas, especially those with multiple deployments, experienced a change in culture in regards to pirated media.

The decisions of the theater and local military leaders stemmed from numerous inputs. These decisions framed the operational environment for fifteen years. Thus, the resulting environment shaped the culture of military over that period. The answers to the first secondary question found that there are discrepancies with the policy and enforcement. The answers to the second question suggested a growing dangers of media piracy for Soldiers. Now the problem and potential dangers to Soldiers are identified, the third question allows the research to see how the problem has affected the culture in the military. Once the U.S. military fathoms the scope of the problem, only then can solutions form to mitigate the risks that lie ahead. The longer these policies remain unchanged or unclarified, the deeper the effects of media piracy have on the culture of the military.

Considering Soldiers have had the opportunity to purchase this material in the bazaars now for fifteen years, one can assume they may feel a certain amount of entitlement to obtain, retain, and potentially distribute this material. The material has been available on U.S. bases, their leaders have not prohibited them from buying it, and the enforcement agencies are letting them bring it back home to the U.S. Much of the

force has accumulated multiple deployments which offered Soldiers ample time to build massive collections of pirated media in a tax-free environment at a fraction of the cost. Now, that Afghanistan is considered a mature theater for deployments, even more comforts have been added to an average deployment. Vendors are selling internet access to Soldiers for their rooms either via wireless or wired connections on base. From the author's experience, there seemed to be no Internet Service Providers (ISP) filtering on the connection allowing Soldiers to visit peer-to-peer sites. Once the Soldiers have adjusted to the reality of purchasing pirated media through a vendor, it is not that large a leap to expect the downloading of pirated media on these unfiltered internet connections.

A quote from Edgar Schein captures the impact this culture could have for future generations in the military. He stated, "The culture of a group can now be defined as a pattern of shared basic assumptions that was learned by a group as it solved its problems of external adaptation and internal integration, that has worked well enough to be considered valid and, therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems."<sup>96</sup> Considering Schein's statement, it is understandable that a permissive culture of Soldiers leisurely synch hard drives trading pirated movies could evolve, especially due to the strong nature of bonds that have formed out of the trials of war.

Further, the falling prices of digital storage devices, such as flash and optical drives, have made storing, transporting, and sharing this media even easier. One Soldier owning one terabyte hard drive costing around \$100 could easily store over a thousand

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<sup>96</sup> Edgar H. Schein, *Organizational Culture and Leadership*, 3rd ed. (San Francisco, CA: Jossey-Bass, 2004), 17.

movies. In addition, it easily fits in his cargo pocket. Schein's quote implies that new Soldiers deploying may learn from peers and seniors to prepare for acceptable media piracy in these deployments. Where does it all end and where does the Soldier draw the line?

Chapter 2 noted the International Chamber of Commerce (ICC) estimated a loss of between \$80 billion and \$240 billion for digitally pirated products in 2015. These numbers are too large to ignore considering the military is one of the instruments of power that is supposed to protect U.S. interests. One could logically ask, how could the relatively small occurrence of media piracy in Iraq and Afghanistan affect these numbers? One way to note the significance of this media piracy at the bazaars, is to examine a rough estimate of the potential past damage to the film industry.

Table 2 depicts the factors used to determine the estimates. The calculations yield three sets of estimated data. The low-end estimate projects that one out of every four U.S. troops and contractor purchased one DVD per paycheck. Alternatively, this category interprets as every U.S. troop and contractor buys one DVD every other month or every four paychecks, either one yields the same data. The mid-range estimate projects that every deployed U.S. troop and contractor buys one DVD per paycheck. The high-end estimate projects that every U.S. troop and contractor buys four DVDs per paycheck. Although this is the high-end estimate, it is important to remember that buying four

pirated DVDs at the bazaar potentially costs less than a new DVD from the PX.

According to *Endgadget*, the average cost of a new DVD is approximately \$15.<sup>97</sup>

Table 2. Factors to Determine Potential Effects of Bazaar Piracy on U.S. Economy			
Factor	Low End Estimate	Mid-Range Estimate	High End Estimate
Estimated number of DVDs a Soldier purchases from Bazaar per paycheck	.25 (can be interpreted as 1 in 4 Soldiers purchase or every Soldier purchases 1 DVD every 4 <sup>th</sup> paycheck)	1	4
AVG number of paychecks per deployment	24	24	24
AVG Price of DVD purchased from PX	\$15	\$15	\$15
Number of deployed U.S. troops per year	Varies per year (see table 3)	Varies per year (see table 3)	Varies per year (see table 3)
Estimated economic impact on U.S. economy	\$193.4 Million	\$773.65 Million	\$3.1 Billion

*Source:* Developed by the author.

Table 3 shows the numbers of deployed U.S. Service members and U.S. contractors per year. The numbers depicted are the highest levels per year based on information gathered from Congressional Research Service analysis for 2007-2015 and

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<sup>97</sup> Ben Drawbaugh, "On average consumers pay \$10 more for Blu-ray Discs than DVD," *Endgadget*, December 31, 2008, accessed May 1, 2016, <http://www.engadget.com/2008/12/31/on-average-consumers-pay-10-more-for-blu-ray-discs-than-dvd/>.

numbers from the New York Times from 2002-2006.<sup>98</sup> Each month has a calculated figure for each of the estimates from 2002-2015.

Table 3. Data Per Year

	2002	2003	2004	2005	2006	2007	2008
Afghanistan U.S. Troop/Contractor Levels	9,700	13,100	20,300	19,500	23,300	29,753	39,960
Iraq U.S. Troop/Contractor Levels	0	148,900	142,800	159,000	147,700	200,325	199,762
Low-End Estimate (1 DVD every 4th pay check)	\$873,000	\$14,580,000	\$14,679,000	\$16,065,000	\$15,390,000	\$20,707,020	\$21,574,980
Mid-Range Estimate (1 DVD per pay check)	\$3,492,000	\$58,320,000	\$58,716,000	\$64,260,000	\$61,560,000	\$82,828,080	\$86,299,920
High-End Estimate (4 DVDs per pay check)	\$13,968,000	\$233,280,000	\$234,864,000	\$257,040,000	\$246,240,000	\$331,312,320	\$345,199,680
	2009	2010	2011	2012	2013	2014	2015
Afghanistan U.S. Troop/Contractor Levels	79,036	117,774	125,087	122,965	98,807	54,065	21,133
Iraq U.S. Troop/Contractor Levels	177,361	120,619	64,910	3,260	2,125	3,100	4,690
Low-End Estimate (1 DVD every 4th pay check)	\$23,075,730	\$21,455,370	\$17,099,730	\$11,360,250	\$9,083,880	\$5,144,850	\$2,324,070
Mid-Range Estimate (1 DVD per pay check)	\$92,302,920	\$85,821,480	\$68,398,920	\$45,441,000	\$36,335,520	\$20,579,400	\$9,296,280
High-End Estimate (4 DVDs per pay check)	\$369,211,680	\$343,285,920	\$273,595,680	\$181,764,000	\$145,342,080	\$82,317,600	\$37,185,120

Source: Developed by the author (Troop level data sources from Heidi Peters, Moshe Shwartz, and Kapp Lawrence, *Department of Defense Contractor and Troop Levels in Iraq and Afghanistan: 2007-2015* (Washington, DC: Congressional Research Service, 2015), accessed May 1, 2016, <https://www.fas.org/sgp/crs/natsec/R44116.pdf>; Alan McLean and Tse Archie, “American Forces in Afghanistan and Iraq,” *New York Times*, June 22, 2011, accessed May 1, 2015, [http://www.nytimes.com/interactive/2011/06/22/world/asia/american-forces-in-afghanistan-and-iraq.html?\\_r=0](http://www.nytimes.com/interactive/2011/06/22/world/asia/american-forces-in-afghanistan-and-iraq.html?_r=0).

<sup>98</sup> Alan McLean and Tse Archie, “American Forces in Afghanistan and Iraq,” *New York Times*, June 22, 2011, accessed May 1, 2015, [http://www.nytimes.com/interactive/2011/06/22/world/asia/american-forces-in-afghanistan-and-iraq.html?\\_r=0](http://www.nytimes.com/interactive/2011/06/22/world/asia/american-forces-in-afghanistan-and-iraq.html?_r=0); Heidi Peters, Moshe Shwartz, and Kapp Lawrence, *Department of Defense Contractor and Troop Levels in Iraq and Afghanistan: 2007-2015* (Washington, DC: Congressional Research Service, 2015), 4-7, accessed May 1, 2016, <https://www.fas.org/sgp/crs/natsec/R44116.pdf>.

The bar graph in figure 6 depicts the summary of the data calculated. The low-end estimates nearly \$200 million dollars, the mid-range estimates \$773.65 million dollars, and the high-end estimates \$3.1 billion dollars potentially stolen from the U.S. entertainment industry. This data does not figure in other coalition forces buying from the bazaars. When reviewing these numbers, readers must keep in mind the limited sources of entertainment available to Soldiers as discussed in chapter 2.

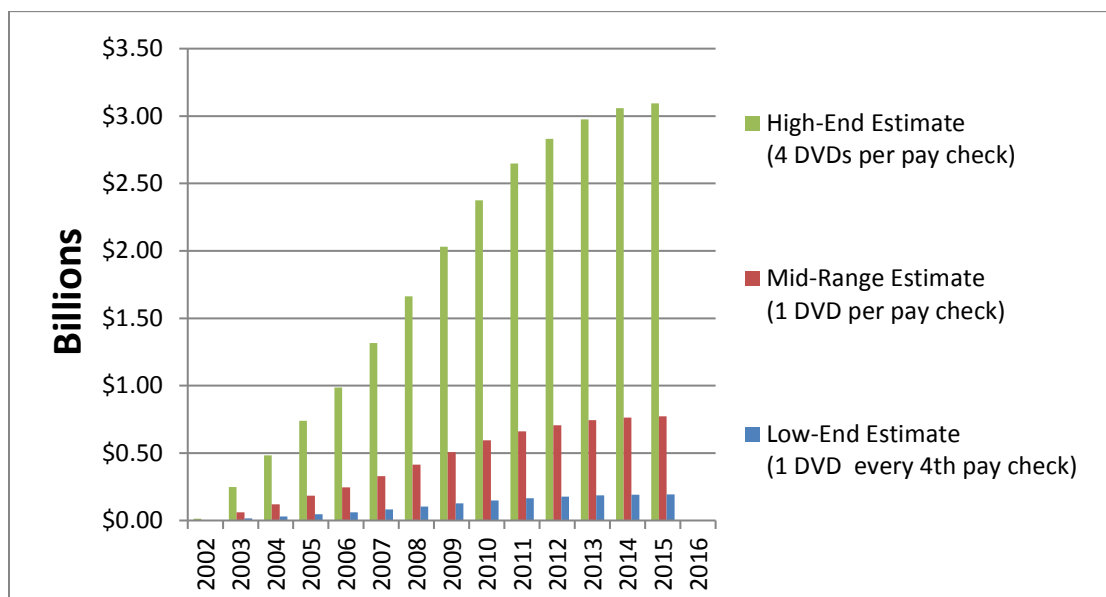


Figure 6. Author's estimate of potential impact accumulated from pirated media at U.S. base bazaars

Source: Developed by the author.

### Piracy Effects on Developing Nations

How does media piracy affect Afghanistan and Iraq as nations and their cultural identity? The operational environment suggests leaders who made the decisions to allow

vendors in the bazaars weighed input from various sources. The viewpoint of the developing nations of Afghanistan and Iraq factored into the considerations heavily. The previous discussion of Afghanistan's history suggest that after decades of authoritarian rule, Afghan citizens had no economic platform to purchase this material legally. The Taliban and their strict Shariah law prevented the citizens from showing any interest in Western culture or technology that led to Western influence. Towards the end of this rule, the people of Afghanistan started to make every attempt to acquire this material any way they could. This led them to the only method they could acquire it being an impoverished nation, which was through pirated methods from neighboring countries.

As globalization continues, the interaction between developed and developing worlds will continue to expand and deepen. Economic, diplomatic, and military bilateral and multilateral agreements will form a web of interaction making the digital world both complex and difficult. The following quote from the report of the Working Group on Intellectual Property Rights for the Information Infrastructure Task Force depicts the importance of resolving transnational intellectual property issues earlier than later.

At the February 1995 G-7 Ministerial Meeting on the Global Information Infrastructure (GII), the Ministers noted that unless rules for the effective protection of intellectual property are taken into account from the outset, the development of the international information superhighway will be severely hindered. How disparate domestic information infrastructures will evolve into a GII will depend on the rules of the road, and one of the most important sets of rules will be those ensuring protection for the works of intellectual property that move through international channels and into the emerging national information infrastructures. As a result, Ministers endorsed the need to work in international fora, including the World Intellectual Property Organization (WIPO), to achieve standards for the adequate and effective protection of intellectual property in international electronic commerce.<sup>99</sup>

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<sup>99</sup> Bruce Lehman, *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights*



This quote was given at a unique period in history, as the internet and global digitation were in their infancy. The war on terrorism had not yet become a reality and the interaction between the developed and developing countries in regards to IP was still in the early stages of development. The report goes on to say, “Development of the GII will make copyright laws and international copyright rules a concern for every user. When the globe is blanketed with digital information dissemination systems, a user in one country will be able to manipulate information resources in another country in ways that may violate that country’s copyright laws.”<sup>100</sup> The situation that has developed in the bazaars in Iraq and Afghanistan provides a perfect example of the predictions the 1995 task force report warned against. This is a primary reason that this practice needs to be addressed and curtailed before another generation is inundated with entitlement to piracy.

Talking point number 2 from the MNFI paper on media piracy stated, “Banning our troops from visiting these shops would have the unwelcome secondary effect of harming Iraqi entrepreneurs selling legitimate goods.”<sup>101</sup> This is somewhat of an understatement. The relationship between local citizens and Soldiers throughout the war in both countries was often fragile. A good relationship with the locals often equates to a more secure environment for Soldiers in a command. Cutting off the sales of this material, which puts much needed money in to the local pockets, only strengthens the relationship. This point on the critical balance of the relationship with the locals through

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(Washington, DC: Information Infrastructure Task Force, 1995), 130, accessed April 4, 2016, <http://www.uspto.gov/web/offices/com/doc/ipnii/ipnii.pdf>.

<sup>100</sup> Lehman.

<sup>101</sup> Multi-National Force Iraq (MNF-I), *MNF-I Talking Points: Pirated Movies in Iraq*, 2-3.

the vendors is the most overriding condition that makes this situation so complex. Any decisions made on the situation, will affect not only the U.S. Soldiers, but also the very people the U.S. is there to support.

### Effects on the DoD

What additional effects can existing policies have on the United States military? Questions 2 and 3 identified some of the effects media piracy can have personally and organizationally for members of the military. There are effects that could harm the professional career of a military member who participates in media piracy as well as potential institutional effects.

All Soldiers and civilians seeking to gain a security clearance for the duties of their career must complete a Standard Form 86 (SF 86), Questionnaire for National Security Positions. Participation in the practice of media piracy through peer-to-peer sites or hosting these files locally for local morale may raise red flags during security clearance screening. Section 27.3 of the SF 86 asks the following question. “In the last seven (7) years have you introduced, removed, or used hardware, software, or media in connection with any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines, or regulations or attempted any of the above?” Using pirated media from peer-to-peer sites, or even purchasing these items from bazaars without written consent from the studio, has a potential interpretation falling under the provisions of this question. Answering yes to this question directly affects the possibility a clearance issued to the Soldier.

There are potential institutional effects to consider as well. As seen in *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), Justice Souter believed that

individuals releasing devices used to promote the infringement of copyright material are liable for acts of infringement by third parties.<sup>102</sup> Comparing this statement to the unique situation caused by the bazaars yields implications of incongruity. The bazaars may be comparable to devices or forums used to sell a preponderance of pirated material. Would that make the U.S. liable for allowing these sales of this material on base in these forums just as Grokster?

### Conclusion

The operational approach used for this research took the history of the U.S. as a developed country and its legislation as the starting point for base knowledge on the subject. The DoD policies and enforcement agency policies were then compared to check nesting and alignment in order to uphold U.S. law and protect its economy. The research found the DoD policies and practices in the bazaars in deployed countries, as well as certain enforcement agency policies, do not align with national and senior DoD and component level service policy. Aligning these policies prove critical to Soldiers operating in these environments as they may not know the potential ramifications of infraction. The longer these policies remain unchanged or clarified, the deeper the effects of media piracy have on the culture of the military. The author's estimation of the damage caused by the bazaar media piracy also showed the effects to U.S. economy could be escalating. This situation grew out of a complex set of variables at the start of two of our nation's longest wars. Realizing the seriousness of the problem and acknowledging the situation is the first step towards finding solutions to the problem.

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<sup>102</sup> MGM Studios, Inc. v. Grokster, Ltd., 545 U.S. 913 (2005).

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

#### Conclusions

The purpose of this research is to answer the primary question, “How effective are DoD policies on copyrighted media?” The environments for this research provided focus to the threat of pirated media sold at bazaars in Iraq and Afghanistan on U.S. bases. It is apparent through news stories, books, and even the author’s experience that pirated media is prevalent in these bazaars. Answers to the secondary questions suggest DoD policy toward pirated media is insufficient.

The initial lack of a large Post Exchange (PX) infrastructure, the need to maintain high morale for troops, and the need to build relations with the local population required immediate actions and decisions by senior leaders to gain a sense of order in an immature theater of operations. However, as the environment matured with the establishment of Post Exchanges in the areas of operation, the situation complexity was reduced.

As technology continues to develop and affect everyday lives, copyright laws become more important. The longer this situation continues to unfold without clear guidance, the more entrenched the situation becomes. This research suggests DoD must clarify copyright policies soon, as the threat for new wars and new theaters to open under similar environments remains.

Ethical culture in the military falls under scrutiny now more than ever after nearly fifteen years at war. In 2010, the Deputy Secretary of Defense William Lynn released his guidance on ethics, integrity and accountability. “Each of us must also adhere to the ethics laws, regulations, and principles that govern participation in official matters where

those matters intersect with our personal and financial interests.”<sup>103</sup> This quote demonstrates an effective summary of the unique situation that has developed in the bazaar where official and personal matters and culture collide. The most recent Secretary of Defense Ashton Carter released poignant ethics guidance in February of 2016. In this guidance, the Secretary of Defense tries to bring values-based decision making aside rules-based compliance to navigate through the challenges of the military.<sup>104</sup>

To this end, I expect leaders at every level of the Department to engage personally with their subordinates in both formal and informal discussions about values-based decision-making. Our personnel, at all levels, should carefully consider the Department’s primary ethical values set forth in Chapter 12 of the Joint Ethics Regulation, DoD 5500.07-R, and applicable organizational values, when making decisions as part of their official duties. These values include, among others, honesty, integrity, loyalty, accountability for actions and decisions, fairness and impartiality, respect, and responsible citizenship. Importantly, this engagement must begin with top leaders and cascade down to each subordinate organization’s leader. Leaders at all levels must foster a culture of ethics within their organizations by setting the example in their own conduct and by making values-based decision-making central to all aspects of the Department’s activities. I understand that many of you already have programs in place to ensure this is happening within your organizations. As leaders, you are in the best position to determine the optimal means for implementing this engagement effort within your respective organizations and to instill the importance of ethics and values-based decision-making within your subordinate leaders. This should be viewed as a continuing engagement rather than a one-time effort.<sup>105</sup>

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<sup>103</sup> William J. Lynn, *Ethics, Integrity, and Accountability* (Washington, DC: Government Printing Office, December 2010), accessed May 8, 2016, [http://www.acq.osd.mil/dpap/policy/attachments/Ethics\\_integrity\\_and\\_Accountability\\_Memo\\_signed\\_Dec\\_21\\_2010.pdf](http://www.acq.osd.mil/dpap/policy/attachments/Ethics_integrity_and_Accountability_Memo_signed_Dec_21_2010.pdf), 1.

<sup>104</sup> Ashton Carter, *Leader-Led, Values-Based Ethics Engagement* (Washington, DC: Government Printing Office, February 2016), accessed May 1, 2016, [http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/secdef\\_ethics\\_memo\\_feb2016.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/secdef_ethics_memo_feb2016.pdf), 1.

<sup>105</sup> Ibid.

Values-based decision-making referenced in Secretary Carter's quote offers a different way of thinking about these complex problems the military face. Section 4.3 of DoD Directive 5500.07 states, "DoD personnel shall perform their official duties lawfully and comply with the highest ethical standards."<sup>106</sup> Yet, Secretary Carter's statement shows the importance of values-based decision making instead of just following rules and regulations blindly. The complexity of the situation suggests that ideal solutions may not be forthright from the start. However, the guiding logic behind the presence of piracy in the bazaars is analogous to the logic and ethics in military contracting. The policies, ethics, and interpretation do not change due to the location of operation.

### Recommendations

This research was not intended to solve the problem of media piracy in deployed environments. Rather, it is merely to see if there is a problem and if DoD policy clearly protects Soldiers from the problem. Thus, some recommendations are in order based on the findings. The following recommendations suggest clearing up the policy between agencies, offer suggestions for practices seen in theater, and changing the culture of the military given current trends.

The first recommendation is to ensure the policy is clearly articulated, published and prevalent to the organization as a whole, and consistent across the governing agencies. The problem of media piracy as a copyright infringement and enforcement in deployed environments is a fairly blatant and obvious issue to articulate in policy. Given the cross-agency nature of the problem, this research recommends a Congressional-level

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<sup>106</sup> U.S. Department of Defense, Directive 5500.07, *Standards of Conduct* (Washington, DC: Government Printing Office. November 2007).

working group or task force research ways and means to ensure consistency between the various agencies. The council or task force could aid in ensuring that an awareness campaign exist within the military, especially in deployed areas. Further, each service's general counsel or subsections thereof reinforce their responsibility to ensure guidance publishes to the commanders at all levels on copyright policy.

Second, once DoD policy is clear, the researcher recommends changes to enforce copyright laws in deployed environments. Customs agencies would need to change their practices to prevent the entrance of pirated materials back into the U.S. Admittedly, this would be difficult due to the increase in the quality of the fake DVDs with growing technology. Further, military leadership must stop the sales of this material in the bazaars. This would be an easy task to accomplish as they control the bazaars. As previously mentioned, this may cause rifts in the local economy and the support of the U.S. troops in theater, especially given these nations have limited economic means to acquire and legally sell these materials. The WTO could potentially assist these nations in setting up an interim way to distribute legal material. Ideally, this material would be distributed in a way that protects the IP holder, boosts the developing nation's local and national economy, and offers a way for the locals to gain access to this material that may have been forbidden in the past. However, such an arrangement may only result in sales to Soldiers in Post Exchanges.

Changing the ethical culture within the military to conform to existing copyright laws would be the most difficult problem. First, the awareness campaign previously mentioned would require visible support from all DoD commands. The National Crime Prevention Association (NCPA) offers guidance on changing attitudes toward IP theft

based on research conducted by Moessner and Associates working in tandem with the Causeway Agency in 2010.<sup>107</sup> Their website offers attitudes and behaviors observed in the study as well as key findings. The NCPA states, “The research found that when Americans learn the extent of intellectual property theft and what it costs their friends, neighbors, neighborhoods, and local tax coffers they are inclined to keep an eye out for Intellectual property theft and change any behavior that contributes to the problem.”<sup>108</sup> U.S. Soldiers who are currently at war against terror need to understand purchasing pirated DVDs can potentially directly put money into terrorist pockets. They need to know the U.S. and global economic impact that this practice causes and how it affects their family back home. Finally, Soldiers need to know that they are not immune from the system or above the law in any ways when it comes to the procurement and proliferation of copyright infringement.

Further research on this subject could investigate the standard phases of military operations throughout a campaign compared to the changing interaction with local economies of a developing nation. Basing this future research on economic growth of the nation while receiving U.S. military assistance may allow the researcher to determine to what extent the bazaar sales bring to the local population. Future research might also look for better methods for these developing nations to work with industries represented by the MPAA. There may be alternatives to allow the developing nations the temporary infrastructure to sell entertainment material while still supporting the industry. This may

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<sup>107</sup> National Crime Prevention Council, “The Research: NCPC Assesses Attitudes About Intellectual Property Crime,” accessed April 4, 2016, <http://www.ncpc.org/topics/intellectual-property-theft/ncpcs-research>.

<sup>108</sup> Ibid.



be helpful in gaining these nation's entrance to organizations such as the WTO and WIPO. The outcome of this research would also assist in ensuring Soldiers are following U.S. and international laws congruent with copyright.

The U.S. has faced unprecedented challenges with the War on Terror that other generations could not have foreseen. The ever-expanding landscape of the digital environment has allowed Western influence to reach even the most remote locations in developing countries. As the least developed nations start interacting with the developed nations of the world through daily interaction in bazaars on U.S. bases, the protection of rights to the copyright holder will become more prevalent and enforced by the entertainment industry. It is incumbent upon the DoD to ensure policies at all levels are appropriately meeting legal requirements while protecting Soldier's professional and personal lives and culture. While some of these policies are congruent, their application by enforcement agencies in the developing nations does not meet the intent. Nearly fifteen years of war in these nations has not only potentially cost the entertainment industry hundreds of millions, if not billions, of dollars in lost revenue, but has also contributed to changing the ethical culture within the DoD. Clarifying the copyright policies and creating a campaign to align changes within the military culture is the best method to protect the nation's greatest resource, the U.S. Soldier.

## GLOSSARY

DMCA (The Digital Millennium Copyright Act). A U.S. copyright law effective 1998 implementing the two of the 1996 World Intellectual Property Organization (WIPO) treaties.

Gray Market. A market where goods are moved or sold that aren't necessarily illegal, but may not have been imported legally.

Media/medium. When media or medium are referred to in this research paper, I am referring to the hardware being used. I will mostly refer to DVDs and CDs as media, but not to exclude USB drives or other larger forms of RAM type hard drives.

P2P file-sharing. Peer-to-peer file-sharing is the process of a server hosting a database of user computers with its list of files available for swapping. The file share provides a forum and often the mechanics to directly download the files. The actual files are not stored on the file share server.

Pirate. The unauthorized use of another's production, invention, or conception especially in infringement of a copyright. (Merriam Webster)

## APPENDIX A

### Multi-National Forces-Iraq Talking Points

Appendix A contains the questions and answers given in the Multi-National Force-Iraq Talking Points paper on Pirated Movies in Iraq.

Q1. Why do Coalition forces allow the sales of pirated movies on its bases?

A1. The U.S. does not allow the sale of pirated media in Coalition-controlled stores. Some Iraqi owned and operated businesses sell pirated media in the form of CDs or DVDs. Some of these businesses are located on or near Coalition operating areas, and we share these operating areas with the Iraqi Government. Others are located solely on private property or in Iraqi buildings and are subject to Iraqi law. We are currently looking into whether any stores currently sell pirated media on U.S. controlled property, and we are determining the appropriate steps to resolve the issue if they do. <sup>109</sup>

Q2. Have you banned U.S. troops from visiting shops that sell these pirated movies?

A2. No. Much like an American flea market, these small shops sell a variety of locally produced goods, including culturally-related souvenirs and crafts. Banning our troops from visiting these shops would have the unwelcome secondary effect of harming Iraqi entrepreneurs selling legitimate goods. We do not condone the purchase of pirated media,

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<sup>109</sup> Multi-National Force Iraq (MNF-I), *MNF-I Talking Points: Pirated Movies in Iraq*, 1-2.

and AAFES-operated post exchanges offer a variety of movies that do pay royalties to American movie producers.<sup>110</sup>

Q3. Have you banned U.S. troops from buying pirated movies?

A3. We expect our forces to comply with U.S. law even when deployed overseas, including those laws which govern criminal copyright infringement. Prosecution of violations is left to the discretion of an individual Soldier's commanding officer. Additionally, U.S. Customs and Border Protection and the Military Provost Office cooperate to ensure the U.S. servicemembers comply with Federal law when returning with goods from overseas deployment. Pirated media items, like bootleg DVDs, will be confiscated upon return to the U.S. Finally, our forces are specifically prohibited from shipping pirated media back to the U.S. Packages to the U.S. are inspected prior to shipping to ensure that they do not contain contraband including pirated media.<sup>111</sup>

Q4. How can the purchase of pirated media by servicemembers deployed in Iraq be curtailed?

A4. U.S. forces have had a long-standing, positive relationship with the entertainment industry. Working to continue this relationship, including the provision of popular entertainment like first-run movies, concerts and other events will help to curtail demand for pirated media.<sup>112</sup>

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<sup>110</sup> Ibid., 2.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

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